

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NEIL GAIMAN and MARVELS AND
MIRACLES, LLC,

Plaintiffs,

-vs-

TODD MCFARLANE, TODD MCFARLANE
PRODUCTIONS, INC., TMP INTER-
NATIONAL, INC., MCFARLANE
WORLDWIDE, INC. and IMAGE
COMICS, INC.,

Defendants.

03-1461

No. 02-C-0048-S

DOCKET
NUMBER

U.S. DISTRICT COURT
WEST. DIST. OF WISCONSIN

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CASE
NUMBER

30(b)(6) DEPOSITION OF TODD MCFARLANE PRODUCTIONS, INC.
AND DEPOSITION OF TODD D.M. MCFARLANE

Volume 1
(Pages 1 - 132.)

Phoenix, Arizona
June 19, 2002
1:45 p.m.

U.S.C.A. - 7th Circuit
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WESTERN DISTRICT OF WISCONSIN
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Reported by:

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Telephone (602) 254-5479

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I N D E X

<u>Examination:</u>	<u>Page</u>
BY MR. ARNTSEN	4

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page</u>
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No exhibits were marked.

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2
3 THE DEPOSITION OF TODD D.M. McFARLANE,
4 taken at 1:45 p.m. on June 19, 2002, at the offices of
5 Brown & Toleu, Ltd., 101 West Adams Street, Phoenix,
6 Arizona, before PAUL GROSSMAN, a Notary Public and
7 Certified Court Reporter #50028 in and for the State of
8 Arizona, pursuant to the Federal Rules of Civil
9 Procedure.

10 The plaintiffs were represented by their
11 attorneys, Foley & Lardner, by Allen A. Arntsen, Esq.
12 and Jeffrey A. Simmons, Esq.

13 The defendants Todd McFarlane were
14 represented by their attorneys, Blackwell, Sanders,
15 Peper, Martin, L.L.P., by Michael A. Kahn, Esq.

16 The defendant Image Comics was represented by
17 its attorneys, Brobeck, Phleger & Harrison, LLP, by
18 Matthew C. Lapple, Esq.

19 Also present was Kenneth F. Levin, Esq.,
20 Mr. Neil Gaiman.

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22
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Phoenix, Arizona

June 19, 2002

1:45 p.m.

TODD D.M. McFARLANE,
called as a witness herein, having been first duly
sworn, was examined and testified as follows:

EXAMINATION

BY MR. ARNTSEN:

Q. Please state your name.

A. Todd -- full name?

Q. Yes.

A. Todd Dean Mark McFarlane.

Q. What's your home address?

A. 122 South -- 12240 South Honah Lee Court,
Phoenix, Arizona 85044.

Q. Mr. McFarlane, it's my understanding that in
addition to having your deposition today on an
individual basis, you're also being presented as the
designated witness on a number of the 30(b)(6) topics
involving the corporate defendants. Is that correct?

A. Correct.

Q. And I guess what I would suggest is if

1 Attorney Kahn wants to just read into the record --

2 MR. KAHN: I'll go ahead. For the record,
3 earlier this week or late last week I sent Jeff Simmons
4 a letter going through the ten topics that were listed
5 in the 30(b)(6) deposition notice designating Todd
6 McFarlane for certain of those topics and designating
7 Julaine Claybaugh on certain other accounting topics
8 concerning documents she had been gathering in response
9 to the document request. Todd has previously been
10 designated under the 30(b)(6) notice for topics 1, 5, 7
11 and 10 from that deposition notice.

12 For the purpose of this deposition, Allen, I
13 mentioned to you earlier Julaine Claybaugh was not with
14 Todd McFarlane Productions back in 1987 when there were
15 a great deal of accounting type and royalty type
16 documents reviewed and compiled in July of 1987 before
17 certain materials were sent to Mr. Gaiman in August of
18 1987 and Todd McFarlane had at least an opportunity to
19 review all those materials back then, and to the extent
20 that any of the other topics that are included in the
21 30(b)(6) designations which deal with copies being sold
22 and moneys being made on various products related to the
23 comic books at issue, then Todd McFarlane Productions
24 will also designate Todd McFarlane himself to testify on
25 those topics.

1 MR. ARNTSEN: So, if I understand the subject
2 areas that Mr. McFarlane is the witness for, he is the
3 witness for topics 1, 5, 7 and 10 and as to the
4 remaining topics he is the witness up to a certain date?

5 MR. KAHN: Yes. He's a witness at least
6 through 1998.

7 MR. ARNTSEN: Okay.

8 MR. KAHN: And since 1998 Julaine Claybaugh
9 has been going through the company records to try to
10 find more recent information on sales of Angela comics,
11 on sales of Angela action figures and other items that
12 would be included within those topics and she would have
13 more knowledge about what those documents say than Todd
14 would.

15 MR. ARNTSEN: So, do we have a separation
16 date between the two witnesses or what are you saying in
17 that regard?

18 MR. KAHN: I'm saying why don't we let Todd
19 try to talk about everything.

20 MR. ARNTSEN: Okay.

21 MR. KAHN: But he may not know actual numbers
22 on sales numbers from '99 to the present because those
23 documents have been gathered by Julaine, but I wanted
24 you to be able to ask him those areas as well.

25 MR. ARNTSEN: So I'll be proceeding as if

1 Mr. McFarlane is the designated witness on all the
2 30(b)(6) topics recognizing there's more recent
3 information since 1998?

4 MR. KAHN: Of a quantitative nature.

5 MR. ARNTSEN: Concerning numbers, he may not
6 have the information and Julaine Claybaugh might.

7 Off the record.

8 (Discussion off the record.)

9 BY MR. ARNTSEN:

10 Q. Mr. McFarlane, why don't you summarize your
11 educational background from high school graduation up?

12 A. I attended Spokane Falls Community College
13 starting in, I think, the beginning of 1980, spent about
14 a year and a half there and then transferred over to
15 Eastern Washington University and stayed there until
16 graduation in 1984. About May of '84.

17 Q. What was your degree in?

18 A. It was just a B.A.

19 Q. Major?

20 A. Well, in the field of art.

21 Q. Okay.

22 A. Graphic design.

23 Q. Did you graduate from high school in 1980?

24 A. No, in '79.

25 Q. Take me up through your employment history

1 from college graduation on. Just bring it through
2 chronologically.

3 A. From the beginning of college?

4 Q. College graduation.

5 A. Oh, college graduation.

6 Q. Or if there was some significant employment
7 prior to college graduation you can bring that up, but I
8 don't care to know about waiting tables.

9 A. Graduation about May of '84, started working
10 for Marvel Comics, sort of a subdivision called Epic
11 Comics.

12 And then in '85 moved over to DC Comics.
13 Worked at DC comic books as a free-lancer for about
14 three years and then -- 'til about '88; went back to
15 Marvel comic books and stayed there as a free-lancer
16 until August of 1991 and then have been self-employed
17 with -- starting in the end of '91, beginning of '92,
18 Todd McFarlane Productions, that I'm the company where I
19 employ myself and became a part shareholder of Image
20 comic books in 1992, and then the toy company I think
21 was like around Christmas '94 maybe. Maybe it might
22 have been -- it might have been Christmas '93.

23 Q. When you say "the toy company," is that TMP
24 Worldwide?

25 A. Well, I'll refer to it as TMP International.

1 Q. Okay.

2 A. Now, can I make a clarification?

3 Q. Yes.

4 A. I have done stuff in Hollywood. Should I
5 tack that on here, too?

6 Q. Yes, why don't you.

7 A. I was exec producer on an HBO animated series
8 from '97 through '99; was exec producer on a full length
9 feature for New Line Cinema '96, '97; directed,
10 co-directed a couple of music videos probably in 1999
11 and 2000, and worked on a film that just got released
12 here, 2001, on doing animation, produced animation and
13 then a couple of small sort of screen plays, scripts in
14 between that.

15 Q. Any other general areas?

16 A. No, not really.

17 Q. The film you just finished in 2001, what's
18 that called?

19 A. Dangerous Lives of the Altar Boys.

20 Q. And you did animation and were a producer?

21 A. Well, there's no sort of good guild rules for
22 animators, but I was credited as a producer of the
23 animation sequences in that film.

24 Q. And executive producer for HBO, was that the
25 Spawn series?

1 A. Correct.

2 Q. And the executive producer for New Line, that
3 was the Spawn movie?

4 A. Right.

5 Q. Backing up now, let me cover one other topic.
6 There are various corporate entities with your names or
7 initials on them.

8 A. Uh-huh.

9 Q. Can you tell me what they are and what they
10 do?

11 A. Todd McFarlane Productions is essentially a
12 publishing company that does some free-lance art work,
13 designs stuff and owns a lot of the trademarks,
14 copyrights of a lot of the characters we design.

15 TMP International is a toy company that
16 produces for the most part action figures that we
17 distribute world-wide.

18 And TMP Asia is a smaller subdivision which
19 helps with our international FOB business with our
20 international distributors.

21 Q. With toys?

22 A. With toys, right.

23 And McFarlane Design Group is where we do a
24 lot of the research and development for a lot of the toy
25 designs.

1 And McFarlane Toys-Canada is again a smaller
2 entity that helps facilitate the sales and distribution
3 of toys up in Canada.

4 Q. Any others?

5 A. TME, which is Todd McFarlane Entertainment,
6 is an office in southern California that deals with
7 entertainment. Usually with the Hollywood business.

8 Q. And are you the sole owner of all these
9 entities, recognizing that one of your entities may own
10 other entities, both getting it back to people?

11 A. I think TME is the only one that I'm not a
12 hundred percent.

13 Q. Okay. Who else is an owner of that?

14 A. Terry Fitzgerald.

15 Q. Okay. And how about McFarlane Worldwide,
16 Inc.?

17 A. You know, I don't know. I don't know what
18 that does.

19 Q. Seriously?

20 A. Right.

21 Q. Okay. But you own it?

22 A. Yes. All that's on that list I own.

23 Q. Okay.

24 A. A lot of accounting reasons for it.

25 Q. Okay. And you're also an owner of Image

1 Comics?

2 A. One of the shareholders, right.

3 Q. And you're the President?

4 A. Right.

5 Q. Are you an officer of any other companies?

6 A. No. I'm a share owner -- I'm a shareholder
7 of another.

8 Q. Are you a shareholder of other companies --
9 I'm putting aside public companies, that kind of
10 thing -- are you a shareholder of any other closely held
11 companies?

12 A. I own a minority stake in an NHL franchise,
13 Edmonton Oilers.

14 Q. Anything else?

15 A. No.

16 Q. Were you one of the founders of Image?

17 A. Yes.

18 Q. And when was that?

19 A. That would have been late -- about December
20 of '91.

21 Q. And who are the current Image shareholders?

22 A. Mark Silvestre, Jim Valentino, Eric Larson
23 and myself.

24 Q. And do you receive a salary from any of your
25 entities?

1 A. From Todd McFarlane -- from TME International
2 I receive a salary from and from Todd McFarlane
3 Productions. And then -- and then anything I do as
4 either an individual or through TME, through Hollywood,
5 but those are not steady paychecks,

6 Q. Those are on kind of a project basis?

7 A. Right. Project by project.

8 Q. And we can designate this part confidential.

9 (The following excerpt was designated
10 "Confidential.")

11 BY MR. ARNTSEN:

12 Q. When you started work at Marvel in 1984 what
13 did you do?

14 A. I was the penciler on a back-up series for a
15 comic entitled Steve Engelhart's Coyote.

16 Q. Were you paid a salary?

17 A. Well, a page rate. You get paid a page rate,
18 X amount of dollars per page.

19 Q. And what's a penciler do?

20 A. He does the drawings with the pencils.

21 Q. Okay. And he's paid piece-work, so much a
22 page?

23 A. Yes.

24 Q. And so as you -- I guess I might as well try
25 to get an understanding of how this business works.

1 What is given to you and what do you produce
2 to put on presumably to the next step in the process?

3 A. In that specific case they would have given
4 me what they call a plot outline, which is essentially
5 two or four pages that just give a general overview of
6 what they want you to draw, and then depending upon the
7 number of pages I have allocated I have to get all that
8 information visually onto the art boards. So, and then
9 from there I would hand it in and it would sort of go
10 through the process.

11 Q. What is the process? What's the process in
12 the creation of a comic book?

13 A. There's variations in it, you know, so -- but
14 again IT sort of goes something like this. That, you
15 know, ideas are come up with and then you hire a writer.
16 The writer takes that idea and then either writes a
17 script or an outline that I was just talking about.
18 From there the writer's job then is given to the
19 penciler and the penciler again has to take all that
20 information and put it into the allocated number of
21 pages.

22 A traditional comic book is generally right
23 now 22 pages, so that's sort of the bulk of what you
24 will see out on the stands.

25 Once the pencils are done, it will go back.

1 There's usually an editor on the books. The editor
2 makes sure that nothing is sort of getting off the
3 track. They will send it out to an inker. An inker
4 will then, just like his name sounds, he will take an
5 ink pen and turn the pencils into a black and white sort
6 of finished Image.

7 Again it will go back to the editor. He'll
8 hand it over off to a letterer. A letterer will then
9 take a script that sometimes while the book's being
10 inked, the writer is getting copies of the pencil pages
11 and is now writing a script.

12 So, at some point the script comes in from
13 the writer, the ink pages come in from the inker and now
14 they've got to get balloons placed on it, you know,
15 where the words are in those circles with tails on them.

16 They give that to the letterer. He does
17 balloon placements, puts it on top of the black and
18 white art work, and then the last guy in the run is the
19 colorist who will then take all of it and will color it,
20 handing it back before it then gets shipped off to the
21 printer to go through that process of converting it into
22 tens if not hundreds of thousands of books.

23 Q. Okay. And you started out as a penciler?

24 A. Yes.

25 Q. And you worked at Marvel initially from '84

1 to '85, correct?

2 A. Yes.

3 Q. Was that always as a penciler?

4 A. Yes.

5 Q. And were you always paid on a sort of page
6 rate, as you discussed?

7 A. Yes.

8 Q. And in 1985 you went over to DC Comics,
9 correct?

10 A. Yes.

11 Q. Why?

12 A. The book that I had been working on at
13 Marvel, although I was only doing a backup, the book got
14 canceled so essentially I had no -- I had no work. So
15 you, you know, you just jump from job to job. And so I
16 went back to somebody I'd met and sent and corresponded
17 with earlier and I was able to pick up another job.

18 Q. And what was that?

19 A. Well, initially it was a couple of what we
20 call fill in issues, which are sort of temp jobs to get
21 you through from month to month, but it became -- it
22 turned into a permanent job, which was the penciler on a
23 book entitled Infinity, Incorporated.

24 Q. And when you say a book, that's --

25 A. A comic book.

1 Q. A comic book series?

2 A. A comic book series, correct.

3 Q. And so these Infinity comic books, they had
4 come out on a regular basis?

5 A. Yes. They were a monthly publication at that
6 time.

7 Q. And so that becomes a regular job for you?

8 A. Yes.

9 Q. And were you the sole penciler or did you
10 work with other pencilers on it?

11 A. It depended on each issue depending upon
12 their deadlines and how fast or slow I was at any given
13 time.

14 Q. And how long did you work as a penciler for
15 that Infinity comic book?

16 A. About three years.

17 Q. And again you were paid on a page rate?

18 A. Yes.

19 Q. Were you -- is that a work for hire?

20 A. I believe so.

21 Q. Did you sign any kind of agreements in
22 connection with that with DC?

23 A. Yes. On the Infinity one I had a contract.

24 Q. And is that a contract that says that this is
25 how much you'll be paid and this is what you'll do and

1 what rights to your -- who has what rights to your
2 work-product?

3 A. And things like sometimes they include sort
4 of if you do ten issues in a row on time they will give
5 you a couple extra bucks or sometimes they will include
6 medical or something like that, so it's spelled out what
7 to expect from them, yes.

8 Q. And how much in this kind of job, how much
9 freedom or artistic leeway do you have?

10 A. I would say a great deal actually.

11 As a guy who has to put the visual, you know,
12 you have to -- sometimes you have to condense a writer's
13 ideas and sometimes you have to expand it depending
14 upon, you know, again you've got this allotment and at
15 times, you know, you'd get stories. You'd just go,
16 "This is bigger than 22 pages," you know. Other times
17 it was shorter than 22 pages. You had to stretch it.
18 So, depending on any given month, you just -- and the
19 way you lay out the page is completely -- it's
20 completely up to the artist's sort of interpretation of
21 how they sort of want to pace all of it. So I'd say
22 yes, I'd say we had a lot of freedom.

23 Q. In connection with this job, did you consider
24 yourself a creator?

25 A. Well, a penciler of comic books, yes. That's

1 sort of how I called myself and introduced myself, "I do
2 pencil comic books."

3 Q. And you did that at DC -- you had essentially
4 the same job at DC from '85 to '88?

5 A. Yes.

6 Q. And then you went back to Marvel?

7 A. Right.

8 Q. Why?

9 A. Everybody is sort of looking out for their
10 career and I'd been on the book for three years and I
11 was looking.

12 It was a team. It may seem silly, but it was
13 a team book which meant it had a lot of characters in it
14 and it can get very arduous drawing a lot of different
15 people. So I was looking to see if I could grab a job
16 that was sort of more focused on a headline character
17 than doing twenty guys in a book.

18 Q. Did Marvel offer you that job?

19 A. I think I did a couple fill ins for them just
20 to sort of show them I can meet a deadline and then I
21 ended up picking -- they gave me the Incredible Hulk to
22 pencil.

23 Q. And was that a monthly comic book again?

24 A. Yes.

25 Q. You were the penciler for Incredible Hulk?

1 A. Yes.

2 Q. For what period of time?

3 A. Probably '88, '89 era.

4 Q. Was your contractual arrangement with Marvel
5 for Incredible Hulk different in any way from your
6 contractual arrangement with DC?

7 A. I don't know if I ever had a contract. Once
8 I went back to Marvel I was just -- it was just
9 piecemeal at that point, so I don't recall if I had a
10 contract with them or not.

11 Q. You were paid per page?

12 A. Per page, right.

13 Q. And it was a work for hire arrangement again?

14 A. Yes.

15 Q. So you understood you didn't retain any
16 intellectual property rights in the work you had done,
17 is that correct?

18 A. Right. I think they actually printed it on
19 the back of checks just in case you didn't understand.

20 Q. How long were you working as the penciler for
21 Incredible Hulk?

22 A. About eighteen months, something like that.

23 Q. Then what did you do?

24 A. Did a little bit of Batman back over at DC
25 for a couple months and then moved on to do the

1 penciling on a comic called Amazing Spiderman.

2 Q. So, how did you come about switching? Why
3 did you switch from Hulk to Batman and then from Batman
4 to Spiderman?

5 A. When I was doing the Hulk I was -- I was
6 building speed and so I was then capable of doing more
7 than one book a month, and so I'd picked up the odd job,
8 but then the opportunity when I left DC, I told a couple
9 of people I'll come back and do some Batman and the
10 opportunity came up to do some Batman. I did that, but
11 it was only temporary, three months.

12 And once that job ended, then I go, well,
13 I -- I'm down to one book. I can actually do two books.
14 And so I went looking for another job and I ended up
15 getting the Amazing Spiderman.

16 Q. During this period of time -- and again this
17 reflects my lack of knowledge of the comic book
18 industry -- is your career advancing? In other words,
19 are you building a reputation in any sense of the word?

20 Can you command higher rates of pay, that
21 type of thing, or is it still sort of a commodity?

22 A. No, there's a little bit of that in there.
23 Again at times it's not different than a normal business
24 in that they have twenty year vets there and they don't
25 want you to sort of exceed sort of the senior, you know,

1 artist. And so, you know, you'd ask. They always used
2 to say, "I can't pay you more than that guy, you know,
3 twenty years."

4 And, "Okay. I understand that."

5 But they are very good AND the raise they
6 gave you a lot of times is to character. It doesn't
7 cost them any money. They shift you from a character
8 you don't like to a character you do. Because you leave
9 the office: "Well, I'm doing Superman. Cool." But you
10 didn't get a raise, right? So you go.

11 But they try to figure out who your favorite
12 characters are so they can actually have an answer for
13 it, but sometimes they would bump you up, but it was
14 maybe five or ten dollars a page at a time or something.

15 Q. And that was the progress of your career up
16 that we've covered so far?

17 A. Right.

18 Q. And you started working on Spiderman in what,
19 '89?

20 A. Yes, I think so.

21 Then again let's just be clear here. It's
22 called Amazing Spiderman.

23 Q. Okay.

24 A. Because we are going to get later to a book
25 called Spiderman, so I don't want to mix our metaphors

1 here. Amazing Spiderman.

2 Q. Amazing Spiderman.

3 A. At the beginning, right.

4 Q. And how is Amazing Spiderman different from
5 Spiderman?

6 A. They -- on some of the more popular
7 characters, given that a book can only come out once a
8 month, they go, "Hey, there's more than one week in a
9 month," and so they figure out how to do sort of another
10 version of it. And so they had three, you know,
11 Superman and Batman, Spiderman, X-Men, all the popular
12 guys usually have more than one title going at any one
13 time.

14 Q. Okay. So you initially were doing the
15 pencilling for Amazing Spiderman and anything else at
16 that time?

17 A. I did a quick couple months on a mini series
18 for DC called -- I think it was called Invasion. I
19 think that might have been the title. So I did that.

20 Q. You indicated that with your initial work for
21 DC you were operating under a written contract, correct?

22 A. Right.

23 Q. And as best you can recall, when you worked
24 for Marvel you were not operating under a written
25 contract, correct?

1 A. Right. I don't recall one.

2 Q. And was that true throughout the period with
3 regard to when you were working for DC and when you were
4 working for Marvel; did you typically work under written
5 contracts with DC and not under written contracts with
6 Marvel?

7 A. No. I think one time I went back and I did
8 the stuff like the Batman fill-ins, if you will, and the
9 Invasion. I don't think there was any contracts for
10 that.

11 Q. Was that also true all the way through your
12 Marvel employment, no contracts?

13 A. I think so. I don't think we ever had a
14 formal contract.

15 Q. So when you then -- take me through from when
16 you started working on Amazing Spiderman 'til you left
17 Marvel?

18 A. Amazing Spiderman probably started in '88,
19 '89. I worked on that one for two and a half years, in
20 that area.

21 And then by this time I'd progressed into --
22 it was the only book I was doing at that time and I
23 had -- I decided instead of doing two books what I'd
24 rather do is do the penciling and the inking on the same
25 book instead of handing it over to somebody else. So I

1 was the penciler and inker on Spiderman as well as doing
2 the covers.

3 And so just because I was always sort of a
4 curious little kid, you know, I kept getting somebody
5 else's stories and I wanted to write my own stories.
6 And so knowing that something had to give, I walked away
7 from Amazing Spiderman and said, you know, I want to try
8 and find a job that I can write and I don't want to -- I
9 don't want to write somebody else's stuff. And so I'll
10 just quit and I'll go see if somebody will give me a job
11 as a novice writer, if you will, but a skilled artist at
12 this point and move from there.

13 Given at that time Spiderman, Amazing
14 Spiderman, was doing pretty good and I helped boost the
15 sales on the book, they didn't want me to really leave
16 Spiderman.

17 So I don't know what the origin of it was,
18 but they had Spiderman books and somebody figured out
19 there's four weeks, so they went, "Well, what if we let
20 you stay on Spiderman? We'll let you write it and we'll
21 create a new Spiderman book for you." I mean, it was
22 better, better than I'd ever thought. I thought I was
23 falling into that part because it would be a big title
24 and I was sort of a novice writer, but, of course, I
25 enthusiastically said yes. And so I then became the

1 writer, penciler, inker of a new title that was just
2 called Spiderman, so there were no adjectives in front
3 of it.

4 Q. So this was a monthly comic and you were
5 doing everything on it other than the -- well, up to the
6 lettering?

7 A. Right. Although there's more one or two
8 issues I actually did letter and one that I colored, so
9 I dabbled in all of it at some point.

10 Q. All right.

11 A. But there was just those three jobs were the
12 main jobs I did, writing, penciling and inking.

13 Q. Was this still on a work for hire basis?

14 A. Right.

15 Q. And did you retain any of the intellectual
16 property rights to any of the Spider -- any of these
17 Spiderman books that you did?

18 A. No.

19 Q. Were you still paid on a page rate?

20 A. Right.

21 Q. But presumably your pay is going up as you're
22 doing additional jobs with it?

23 A. Well, you get some extra money on the
24 royalties depending on sales, so again that's where they
25 could keep your page rates going down and, well, if you

1 go on a big selling book you get some extra money.

2 Q. Is that true if you're a penciler?

3 A. Right.

4 Q. It's true at every one of the stages then?

5 A. I can't say that for sure. I don't know if
6 that's true. I don't know.

7 Q. And were these royalty agreements, was there
8 a standard rate, a standard formula or program in place?

9 A. Yes, I think so.

10 Q. So again for a book that you were doing,
11 would you get -- there would be some royalty arrangement
12 for the stories you were the writer on, correct?

13 A. Right.

14 Q. And then there would be a royalty arrangement
15 for the books that you were a writer and penciler on,
16 correct?

17 A. If it met their formula, right.

18 Q. And can you just describe for me what the
19 formula was, how it worked?

20 A. You know, I think -- I think it was if you
21 sold more than around 140,000 copies then you were in
22 line to get something.

23 Q. Did you create any characters in connection
24 with this work?

25 A. With the Spiderman work?

1 Q. Yes.

2 A. Yes.

3 Q. And did any -- did you get any rights in
4 connection with the characters you created?

5 A. No.

6 Q. So, all -- I mean, in connection with your
7 work, you understood it was all work for hire, correct?

8 A. Correct.

9 Q. And your employer was keeping all of the --
10 all of the sort of residual rights to your work,
11 correct?

12 A. Correct.

13 Q. So, during what period of time --

14 A. Excuse me for a minute.

15 Q. During what period of time were you the
16 writer for Spiderman?

17 A. Probably '90 and '91.

18 Q. Were you doing anything else during that time
19 period?

20 A. I don't think so.

21 Q. So, what did you do from there?

22 A. After Spiderman?

23 Q. Yes.

24 A. I stopped working on the book. We had our
25 first child, my wife and I, and I wanted to take a

1 break. We never had a kid before so I wanted to sort of
2 enjoy that time. That would have been in August, 1991.

3 And I'd been having off and on conversations
4 with sort of other free-lancers and friends about sort
5 of saying, "Why don't we -- why don't we start our own
6 company. What are we working for the companies for.
7 So, sort of dancing to their tunes to some extent. Why
8 don't go we go and try to band together."

9 And so by the end of 1991 we had gathered
10 seven of us and three of us announced to Marvel that we
11 were in unison leaving Marvel comic books to sort of
12 start a commune of artists and writers together and that
13 started -- that began that we ended up calling it Image
14 Comics and that began in 1992, the beginning of '92.

15 Q. Who were the other founders of Image Comics?

16 A. Back then the other six would have been Mark
17 Silvestre, Eric Larson, Jim Valentino, Rob Liefeld, Jim
18 Lee and Wills Portacio.

19 Q. Image was founded at the start of '92?

20 A. I'd say probably December, December of '91.

21 Q. What did you do in connection with your work
22 with Image initially?

23 A. Well, Image was put together to sort of
24 create a logo. You know, we had sort of a brand name.
25 We as artists were not necessarily skilled in the

1 details of business at this time and so we ended up
2 running into some people that had a smaller company
3 called Malibu Comics and they offered to publish the
4 books for us to help us on our way; let us sort of as
5 much as possible concentrate on doing the art, if you
6 will, and the books and the writing and not worry about
7 sort of the other things that are inherent with
8 publishing a comic book.

9 So each one of us went to our little hovels,
10 started our own companies, created our own characters
11 and then fed those ideas in the forms of comic books
12 into this commune and then those were published by
13 Malibu Comics starting in 1992.

14 Q. So when was the first comic you did published
15 by Malibu Comics?

16 A. June, 1992, I believe.

17 Q. And what comic was that?

18 A. Spawn Issue 1.

19 Q. Were you the -- what was your involvement in
20 Spawn Issue 1?

21 A. I was the writer, penciler, inker, creator,
22 editor. You know, most of the dirty work. I did the
23 dirty work other than the lettering and coloring at that
24 point.

25 Q. So you did everything but the lettering and

1 coloring for the final copy that was sent in to Malibu
2 to publish?

3 A. Right. For the most part, right.

4 Q. And the first Spawn Issue 1 came out in June,
5 1992?

6 A. Yes.

7 Q. Then did it come out at a certain frequency?

8 A. We attempted to be monthly. I can't quite
9 say that we were accurate every month, no.

10 Q. Does Spawn still come out on a regular basis?

11 A. Yes.

12 Q. And are you still -- do you still write and
13 draw for Spawn?

14 A. No. I help in the plotting and the editorial
15 work.

16 Q. In 1992 were you involved in any other comics
17 other than Spawn?

18 A. No.

19 Q. Did you enter into any kind of contractual
20 arrangement with Image with regard to Spawn?

21 A. I don't know if there were formal contracts
22 at that time or not.

23 Q. Did you enter --

24 A. Because again there was sort of a shell
25 company, so there wasn't really sort of a company. It

1 was a commune.

2 Q. Did you generate any contracts with Malibu in
3 connection with Spawn?

4 A. I don't know. I remember having
5 conversations with them individually because they
6 understood that there was no Image. It was only the
7 individuals. So I think they had to negotiate
8 individually.

9 MR. KAHN: Let me clarify it for you. When
10 Allen asks you about contracts, he's not asking you for
11 some legal definition. It can be an agreement either
12 written or oral. That's what he's doing.

13 THE WITNESS: Oh.

14 MR. KAHN: So if there were any agreements
15 with Image, any agreements with Malibu, you can tell him
16 whether or not it was written. Correct me if I'm wrong.
17 When he says "contracts" it doesn't mean only a written
18 contract.

19 MR. ARNTSEN: I apologize.

20 MR. KAHN: That's all right. It just became
21 clear from his answer when he said "I can't think of any
22 written contracts."

23 THE WITNESS: So with the shell company or
24 commune of Image we agreed to take all of our ideas that
25 we sort of created separately and put them into the

1 middle and then from there we sort of shopped that
2 around and had them published by Malibu. And again I
3 think Malibu may have dealt with us individually. I
4 don't recall.

5 BY MR. ARNTSEN:

6 Q. And you don't, if I understand correctly, you
7 don't recall any written contracts, correct?

8 A. Right.

9 Q. Do you recall what the general structure or
10 terms of the contracts were between you and Malibu?

11 A. I think it was -- I think they ended up
12 getting -- it would -- they would help us with the
13 production of it, you know, so again with accounting,
14 solicitation, collecting the bills. And then at the end
15 of that I think they would get 10 percent of whatever
16 they collected from each individual title I think is how
17 it worked.

18 Now, it may have been a flat fee plus 10
19 percent. I don't recall. But they got a percentage of
20 sales.

21 Q. And the way it worked out is that you --
22 essentially what you and your colleagues at Image would
23 get, you'd pay Malibu something and pay various people
24 things and then what's left is what you got?

25 A. No. It actually worked the opposite because

1 Malibu was the publisher and dealt directly with the
2 printers and the distributors.

3 They would collect all the moneys, deduct
4 their fee out of that, whatever we had agreed to at that
5 time, and then whatever was left over then -- they may
6 have paid the printers again and some of the shipping,
7 some of the inherent costs, and then whatever was sort
8 of left over then -- then they'd send out the check.
9 And I don't recall whether they sent it to the
10 individuals or to the clearinghouse of Image.

11 Q. How did it work with -- who retained the
12 intellectual property rights to the work you did on
13 Spawn?

14 A. All the books were controlled by the
15 individual creators.

16 Q. What did you do with regard to -- when you
17 started out with this, what did you do with regard to
18 like copyright notices?

19 A. I think -- I think -- I mean we put notices
20 at the bottom of the first page or Malibu helped us with
21 that and I think later on somewhere along the line I
22 think we did some filings on the trademarks.

23 Q. How did you come up with the language of the
24 copyright notices that you used?

25 A. You know, probably just from looking at other

1 comic books, use our best knowledge and talking to
2 Malibu.

3 Q. Do you recall putting much thought into that?

4 A. Just enough to make sure that everybody
5 thought that it seemed official, yes.

6 Q. Now, in 1992 you had -- you arranged with
7 some guest writers to do some Spawn issues, correct?

8 A. Yes.

9 Q. How did that come about?

10 A. Spawn had been out for maybe about a year at
11 this point or close to it and Image Comics was founded
12 by a bunch of artists and the knock against us was that,
13 you know, we didn't know how to write. We could only
14 draw.

15 And so again it would be -- I thought it
16 would be sort of an interesting idea to bring some
17 writers on to -- on to the book to sort of see what
18 their take would be on some of the ideas for it.

19 Q. Was that your idea?

20 A. Right.

21 Q. So how did you go about implementing that
22 idea?

23 A. I came with a mental list of guys that sort
24 of would fit the bill, that would sort of -- sort of
25 would be interesting names to put on it and then started

1 making phone calls.

2 Q. And who did you come up with as guest
3 writers?

4 A. Alan Moore, Neil Gaiman, Dave Simm and Frank
5 Miller.

6 Q. How did you come up with Neil Gaiman?

7 A. I think Neil was given a lot of critical
8 acclaim at that point. Sandman was his book I believe
9 that he was writing that was, you know, winning awards
10 and, you know, he was -- and again I think Neil had done
11 little, if any, sort of superhero comic book work and so
12 I thought again it would be an interesting choice.

13 Q. When did you first meet Neil?

14 A. Oh, I don't know. I don't know.

15 Q. As far back as you can recall, recognizing
16 we're talking about stuff that happened ten years ago.

17 A. Yes. It probably was at a comic book
18 convention, you know. So, before all -- all of him
19 doing work. Again all of us are a small community. You
20 sort of butt into everybody. So my guess is we had an
21 introduction somewhere.

22 Q. And if I understand correctly, prior to Neil
23 doing work for you on the Spawn series you believe you
24 had met him and run into him on some occasions but you
25 don't -- there's no specific recollection, is that

1 right?

2 A. Right. I don't recall specifically.

3 Q. You were acquainted with him?

4 A. His work, yes. His work.

5 Q. Okay. How did you -- how did you decide you
6 were going to compensate and allocate creative rights
7 between with regard to these guest writers you were
8 looking to have help with Spawn?

9 A. I don't think that was sort of the topic of
10 conversation at the beginning. It was -- my first
11 intent was to find the writers and sort of go, "Hey,
12 here's some -- there's an opportunity here. Would you
13 guys be interested in it?" And then -- and then sort of
14 tell them it's a Spawn book and have some fun with it.

15 Later on in some of the conversations I told
16 them that they would get \$100,000 for doing it and in a
17 sense it was pretty much the same conversation for
18 everybody. I wanted them to be equal, so did all of
19 them, so they could pass notes back and forth. And so
20 we started from there.

21 Q. Okay. Tell me as best you can recall your
22 conversations with Neil Gaiman in connection with his
23 work for Spawn 9?

24 MR. KAHN: Just a second so I can clarify.
25 Allen, do you want the first conversations regarding his

1 agreement to do it or do you want the conversations all
2 the way through the creation of publishing Spawn 9?

3 MR. ARNTSEN: I guess the agreement. What
4 would work best is if we -- and unless I tell you
5 otherwise, somewhat my question is going to work them
6 through chronologically.

7 MR. KAHN: Okay.

8 BY MR. ARNTSEN:

9 Q. As best we can. I'm trying to kind of get
10 your recollection out in a logical way without having
11 the questions be too either parsed on the one hand or
12 vague on the other.

13 A. I would have somehow contacted Neil talking
14 about him coming and potentially writing an issue, him
15 eventually saying yes, talking about some of the
16 creative stuff that I was doing already in the book,
17 talked a little bit about the money, talked a little bit
18 about some of other guys that were already coming on.
19 And then from there the follow-up conversations for the
20 most part would have been sort of creative talk about
21 what we were going to sort of do or not do and how Spawn
22 continuity was doing up to this point and things of that
23 matter.

24 Q. What did you talk about with regard to
25 financial terms?

1 A. I think at the beginning it was -- it was
2 just \$100,000 and a payment for all works in
3 consideration for him coming on board and doing that and
4 that we'd pay him in advance before he got started and
5 then a lump sum would come later.

6 Q. What did you do -- what were your
7 conversations with regard to how the process would work?

8 A. I believe I asked Neil how he normally works.
9 Neil from my experience writes different than what I was
10 used to.

11 I would get a plot outline. Neil is one of
12 the writers that likes to write the script before the
13 art instead of after the fact.

14 So I'd done a couple jobs like that and so I
15 went, "Oh, okay," you know. I think Al Moore had done
16 it the same way.

17 And so I go, "However you like to write, you
18 know, sort of write it down and then we'll just sort of
19 move forward from there. We got to get a cover out.
20 We've got to do a cover. So just come up with some
21 ideas and I'll get a cover because you have got to do
22 solicitations and then we can sort of get going."

23 Q. Do you recall where Neil was living when you
24 were having these discussions with him?

25 A. My understanding is that he was in Minnesota

1 some place.

2 Q. Did you ever meet in person with Neil in
3 connection with, you know, putting together this
4 agreement to have him write for Spawn prior to him
5 actually starting the job?

6 A. I don't think so. It might have just been
7 all over the phone, you know. I can't say for certain.

8 Q. What types of -- did you exercise any control
9 with regard to Neil's script?

10 A. I told him to go and write it and unless
11 something was sort of completely off the radar map after
12 our discussions on what direction I was heading in, what
13 the book was and what the characters were about, that,
14 you know, hand it in and if it looks good then we will
15 bless it and get it out to print.

16 Q. Did you tell him a schedule, this is the
17 schedule you want for him?

18 A. I probably -- I probably gave all of them
19 some parameters of the schedule, right.

20 Q. And then you were just looking to receive a
21 script?

22 A. Right.

23 Q. And along with any conversation, interim
24 conversations along the way for discussions, correct?

25 A. Right.

1 Q. And Neil was never an employee of you or any
2 of your companies, correct?

3 A. Right.

4 Q. Did you ever sign any, or enter into any kind
5 of work for hire agreement with Neil?

6 A. No.

7 Q. Did you have any discussions with Neil with
8 regard to who would hold what intellectual property
9 rights to the work he was doing?

10 A. I don't think we got overly specific with it.
11 They were coming on to my book, writing for me, so I
12 think it was a basis of understanding from everybody.

13 Q. Well, do you recall any -- any discussions in
14 connection with that?

15 A. Nothing specific. We were artists. I don't
16 think that we had sat there and talked about copyrights
17 at that moment.

18 Q. Okay. So, if I understand, as best you can
19 recall there weren't discussions with copyrights or
20 trademarks in connection with this, correct?

21 A. No. At that moment.

22 Q. Did you talk at all before Neil wrote the
23 script of any characters he might introduce or anything
24 like that?

25 A. Yes. When we were having our creative

1 conversations his issue was Issue 9. Issue 8 was
2 written by Alan Moore. Again Neil was the most curious
3 of the four as to sort of, you know, continuity in the
4 book and how it all sort of worked where the other guys
5 were more about doing stand-alone stuff.

6 So Issue 8 Alan Moore delved in the concepts
7 of hell after some of my discussions and so it sort of
8 was an easy one for him to go, "Hey, Alan's doing hell.
9 How about I do heaven given that Spawn's character's
10 from the pit of hell?"

11 Q. So that was Neil's suggestion to you?

12 A. Oh, well, I can't say where it came from. In
13 the midst of a conversation you know, again he was
14 asking questions, "What is Spawn? Where are you headed
15 with Spawn? What's in it? What sin do you sort of want
16 me to put in there or not put in there?" And so we sort
17 of these had conversations about what would make an
18 interesting issue.

19 Q. These were all over the phone as best you can
20 recall?

21 A. I believe so.

22 Q. When did you first recall hearing about the
23 Angela character?

24 A. We probably came to an understanding we were
25 going to deal with heaven so we needed an angel

1 character of some sort. I don't know if she had a name,
2 but I had to get a cover out because the covers precede
3 everything.

4 So, once we said we're going to do heaven and
5 heaven has angels, I went and did a cover and from there
6 then at that point Neil probably gave her the name at
7 that point. I don't know if she had a name or if she
8 was just a generic angel at that point.

9 Q. Had Neil provided to you any thumbnail
10 sketches of angels prior to your doing the cover?

11 A. No.

12 Q. Did Neil provide drafts of his script to you
13 or did you just essentially get a final product that you
14 then plugged into your comic book process?

15 A. I mean, he gave me a draft that I don't know
16 if I made any or little changes on it and then started
17 drawing away at that time at it because again I was the
18 artist on it, so credit seemed pretty fine, and I
19 started doing the art work.

20 Q. So, do you recall making any changes in the
21 words of the script?

22 A. No.

23 Q. There was a character in Spawn Issue 9 that,
24 for want of a better word, and I'm not trying to put any
25 conclusion on this, but that was Spawn in the Middle

1 Ages. Do you know what I'm referring to?

2 A. Yes, yes, right.

3 Q. And we'll call him Medieval Spawn.

4 A. Yes.

5 Q. And for the purposes of these questions I
6 understand there are some issues, et cetera, et cetera.

7 How did that character come about?

8 A. Probably through the conversations Neil and I
9 had had throwing ideas back and forth and then him
10 inquiring about what directions I wanted to go to, what
11 the back story was of Spawn, what I had done, what I was
12 planning on doing and from all of that comes a story.

13 Q. Prior to this Medieval Spawn character had
14 you had any Spawns in other times other than the
15 present?

16 A. I don't think visually. I may have mentioned
17 it in some of the writing I had done.

18 Q. Do you recall?

19 A. Pardon me?

20 Q. Do you have any specific recollection --

21 A. No.

22 Q. -- in that regard?

23 A. I'll have to go reread my books.

24 Q. But as you sit here today you have no
25 recollection, correct?

1 A. Right.

2 Q. Backing up a minute to the Angela character,
3 one of the early things you did was drew a cover with a
4 picture of an angel on it, correct?

5 A. Yes.

6 Q. Do you recall any further discussions with
7 regard to that character and features, qualities, that
8 kind of thing prior to your getting the script from
9 Neil?

10 A. Again, we knew she was going to battle Spawn
11 or there was going to be somebody battling Spawn.
12 There's always a good guy and a bad guy. And so she was
13 essentially going to be the bad guy. And so, you know,
14 she couldn't be a wimp, you know. None of the bad guys
15 are soft looking. So we needed to make her a warrior,
16 yes.

17 Q. Do you have any recollection of any specific
18 conversations in that regard?

19 A. No.

20 Q. There's another character in Spawn Issue 9
21 called Count Cogliostro. Do you know which character
22 I'm referring to?

23 A. Right.

24 Q. Do you have any recollection as to the
25 genesis of that character?

1 A. Again in our conversations and again Neil's
2 curiosity about where I was going and what I wanted to
3 do, he wanted to know if there's anything he wanted me
4 or I wanted him to add that I was going to do to sort of
5 get the stories going.

6 I told him that I had sort of this antihero,
7 that I also wanted this sort of anti-Moses character
8 here and so this all sane sort of guy, and so we talked
9 in parameters about this Moses character and then I was
10 going to eventually bring in this guy. So if you want
11 to plug him in here, so here's sort of parameters of
12 what he is and if you can find a spot for him, put him
13 in.

14 Q. And what were those parameters that you gave
15 to Neil?

16 A. Again using Moses as -- the biblical Moses as
17 sort of the back drop, sort of the anti version of that
18 guy, a guy who sort of knows more than anybody else and,
19 you know, has more insight than anybody else and may
20 have sort of the divine knowledge of what's going on,
21 although in this case he's actually from the pit of hell
22 which is why the anti-Moses. But again just in those --
23 in those sort of terms.

24 Q. Who came up with the name for Cogliostro?

25 A. I believe it was Neil.

1 Q. Is the same true with Angela?

2 A. Yes, probably.

3 Q. Did you have any discussions at this time,
4 and I'm talking about the time prior to the publication
5 of Spawn Issue 9, as to who had the rights between Neil
6 and you with regard to these characters he was creating?

7 A. I think the -- the only conversations was
8 Neil began to ask questions like, "What happens if this
9 book gets reprinted or a trade paperback?" He started
10 asking sort of follow-up questions.

11 Q. And what did you say?

12 A. "Oh, how do you want me to handle it?"

13 Q. And what did he say?

14 A. "Well, you know, I've got a pretty good
15 contract at DC. I'm doing pretty good. I don't want to
16 be any worse off for the wear here. And so, you know,
17 you can just keep it, you know, and get close to my DC
18 contract. That would be good."

19 Q. And what did you say?

20 A. "Okay."

21 Q. And have we now made it through the end of
22 the conversation?

23 A. That's the gist of it.

24 Q. What else do you recall of it?

25 A. Most of it.

1 Q. That's all you can recall of that?

2 A. Yes.

3 MR. ARNTSEN: Let's take a little break.

4 (Whereupon, a short recess was then had from
5 2:50 p.m. until 3:06 p.m.)

6 BY MR. ARNTSEN:

7 Q. Did Neil provide some -- what I guess are
8 called thumbnail sketches to you for Spawn 9?

9 A. With the script, yes.

10 Q. So he sent those to you when he sent the
11 script to you?

12 A. Right.

13 Q. Is that a typical part of the process?

14 A. No.

15 Q. Were there any discussions beforehand, before
16 him providing these to you of him providing the
17 thumbnail sketches?

18 A. Just, you know, again Neil had a way of
19 working and I didn't want to disrupt that so, you know,
20 "However you work, I'll adjust around it."

21 Q. Did you use the thumbnail sketches at all?

22 A. I looked at them for some of the pacing that
23 he wanted, so -- but again not -- so it would be bad
24 against writers, but they are they are not artists,
25 but -- so you have to make adjustments where you see

1 fit, so --

2 Q. Backing up a minute on this comic book
3 process and what -- the final piece of original art work
4 that becomes the copy for the publication, what does
5 that look like? How big is it? What does it look like?

6 A. Generally it's -- the image is 10 inches by
7 15 inches and it's black and white because the inker has
8 now come on and made it. The color is done at the
9 printer or now on computer, so the color rarely is
10 there. It's black and white imagery of what you would
11 see in a comic book at a larger size.

12 Q. So it's a page?

13 A. Yes, a page. Each page, each page would be
14 10 by 15.

15 Q. Okay. Then what use is made of those pages
16 once the comic book comes out?

17 Do they have some value as original art work
18 like you see these Disney things and stuff like that?

19 A. Yes. Traditionally the way that it works and
20 the way it's been explained to me is that we don't own,
21 for instance, when I was working on Spiderman, I don't
22 own Spiderman but I own the paper that it's on, the
23 image that it's on. So, although you can't now separate
24 the image from the paper, what they do is historically
25 they give you the original art work back and you can do

1 with it as you want as long as you're not doing
2 reproductions of it.

3 And so again historically most artists would
4 take them to conventions, sell them, give them away,
5 give them to family members, whatever they want to do.
6 Hang them up, whatever they choose.

7 Q. And is that what you did with your Spawn art
8 work also?

9 A. No.

10 Q. What did you do with that?

11 A. Kept it.

12 Q. You still have all of it?

13 A. Yes.

14 Q. What about your Spiderman art work?

15 A. No. I -- I sold some of those pages, the
16 good ones.

17 Q. In your initial discussions with the four
18 guest writers who were doing, I believe it's Spawn 8
19 through 11, did you tell them up front it's \$100,000?

20 A. Uh-huh.

21 Q. You have to use words.

22 A. Oh, I'm sorry. Yes.

23 Q. You were testifying earlier concerning your
24 conversation with Neil concerning his DC agreement. Do
25 you recall that?

1 A. Right.

2 Q. Did you do anything to look into what his DC
3 agreement was?

4 A. Once he mentioned that he wanted the same
5 rights and privileges of it, then I go, "Well, you're
6 going to have to tell me what those are, you know. So,
7 better yet, you know, if you want to give me a copy,
8 cool." So, but he just -- just handed over some of the
9 terms whenever that was a specific item we happened to
10 be talking about.

11 Q. Did you refer back to the contract that you
12 had with DC?

13 A. Not at the beginning.

14 Q. At some point in time?

15 A. Yes.

16 MR. ARNTSEN: Mike, did you produce those?

17 MR. KAHN: No, I don't -- I don't remember
18 seeing them, but let me ask you, can you put your hands
19 on that contract?

20 THE WITNESS: I can look for it. Again we're
21 going back to '85, so it's probably in a weird spot if I
22 still have it.

23 MR. KAHN: Well, if you can find it -- if we
24 can find it we will produce it, and if you stumble on it
25 tonight we'll give it to you tomorrow.

1 THE WITNESS: All right.

2 BY MR. ARNTSEN:

3 Q. Okay. Did you ever do anything -- back in
4 this 1992 period did you do anything else to try to
5 determine, okay, what are the terms of the DC agreement
6 that Neil is talking about?

7 A. No. For the most part Neil, Neil fed me most
8 of the information.

9 Q. Did in fact the compensation that each of the
10 guest writers for Spawn 8 through 11 receive, was it
11 \$100,000 apiece?

12 A. I believe so.

13 Q. Any other compensation?

14 A. I know there were additional payments, not --
15 I'm trying to think. For those issues? No.

16 Q. How about for reprints of those issues?

17 A. There were -- there were additional payments
18 made after the publication of it to Neil, but again I
19 don't know specifically what each one of those was for.

20 Q. How about the other artists, the other
21 authors? For instance, I note there was -- the issues
22 were reprinted in trade paperbacks, correct?

23 A. Right.

24 Q. And were the writers paid something for that?

25 A. I don't think so, or I don't know.

1 Q. Your answer is you don't know?

2 A. I don't know.

3 Q. Did you have any discussions in this 1992
4 period with any of these guest writers about -- about
5 the copyrights for the work?

6 A. Not specifically in those terms, no.

7 Q. And when you're saying "not specifically in
8 those terms," do you ever recall the word "copyright"
9 being mentioned?

10 A. No.

11 Q. The same with trademark?

12 A. Well, I owned the trademark for Spawn, so
13 everybody sort of knew it was my book. They knew they
14 were coming to my book, so they knew who owned that.

15 Q. With regard to the Spawn trademark?

16 A. Right.

17 Q. Have there been other guest authors for Spawn
18 since these Spawn 8 through 11 guest authors?

19 A. There have been other people write the books.

20 Q. Was this on a work for hire basis?

21 A. I don't know how we broke down everybody.

22 Q. These four guest authors weren't on a work
23 for hire basis, correct?

24 A. I can't say that. It wasn't in writing and
25 we all sort of understood what the task was in front of

1 us.

2 Q. What do you mean by that?

3 A. I created a book, Spawn. I wanted them to
4 come on to my book and do some writing for my book, so
5 although -- although we weren't lawyers, we didn't get
6 into it, I think it was a general understanding as to
7 what everybody was getting into.

8 Q. Was the phrase "work for hire" mentioned?

9 A. I don't recall.

10 Q. Did any of the other three guest authors for
11 Spawn 8 through 11 create any new characters?

12 A. Yes.

13 Q. And who created what?

14 A. I don't know. I don't know if they actually
15 gave them names or every -- it's impossible to write
16 something and not create something new, so I'd have to
17 look at those issues before I could give you that
18 answer.

19 Q. Did any of the other guest authors create any
20 characters of whom action figures were made?

21 A. No.

22 Q. Following the -- was Spawn Issue 9
23 successful?

24 A. I'd say yes.

25 Q. What was it's -- I mean, putting it in the

1 spectrum of the, you know, of the Spawn comics, how
2 did -- was it more successful than most, less
3 successful, within the middle, that kind of thing?

4 A. I believe that when Spawn 1 came out it was
5 Issue Number 1 and it continued to be Issue Number 1.
6 So in the confines that Issue 9 was I believe still
7 Issue Number 1, then it was -- it was equal to task, if
8 you will, so -- and I think 8, 9, 10 and 11 were all
9 Issue Number 1. Spawn was the number 1 selling book.

10 Q. So you're saying each succeeding issue
11 outsold the preceding one?

12 A. No, no. I'm saying we have charts in our
13 industry and regardless of sales, because that's all
14 relevant, that they say who is the biggest seller.

15 So, to be sort of overly simplistic, you
16 could sell a million and be in first. You could also
17 sell three and if everybody else only sold two you'd
18 still only be number 1. So, taking out sales sort of
19 within the confines of it, sales I believe was non-stop
20 1 for almost twenty issues in a row.

21 Q. So you're saying that, if I understand
22 correctly, as best you can recall Spawns 1 through 20
23 were each the biggest selling comic book for their month
24 of issue, is that correct?

25 A. Or for a regular book or pretty damn close,

1 right.

2 Q. Okay. And how did -- was Spawn Issue Number
3 9 -- within the context of the first twenty Spawn issues
4 where did it come out? In other words, were they all
5 approximately equally successful, did it outsell the
6 ones before and after? I'm just trying to get a
7 context.

8 A. Probably it would be mid range if you average
9 the first twenty because by Issue 20 the market's
10 starting to soften a bit so you're still behind the
11 charts and not be selling near what you were selling at
12 the beginning.

13 Q. What was the biggest selling Spawn issue?

14 A. Spawn Number 1.

15 Q. Did you have any discussions then following
16 the issuance of Spawn Number 9 of Neil doing some other
17 work following up on the work he'd done for Spawn 9?

18 A. I think shortly after Issue 9 came out we
19 sort of both seemed to be happy with what had gone down
20 and Neil wanted to do some more work, so we sort of
21 talked about some other project and the obvious one was
22 for him to do a mini series, which isn't a regular book,
23 with Angela in it.

24 Q. And what's a mini series?

25 A. A mini series is not unlike what you see on

1 TV. That it's not part of regular programming or -- and
2 so again Spawn is a monthly comic book and so is
3 Superman and Batman and those kinds of books, but every
4 now and then companies will add or creators or
5 publishers will add sort of stand-alone stories, but
6 they don't mean it to be an ongoing book. They just
7 have a story to tell.

8 Sometimes it's one issue sometimes it's ten
9 and in between that, but it's not meant to be something
10 that will last much longer than a short period of time.

11 Q. So you had discussions about Neil doing
12 something like this with regard to Angela?

13 A. Yes. We talked about doing more work
14 together, uh-huh.

15 Q. Tell me how that came about, what you recall
16 about that?

17 A. Like I said, I think it was -- Issue 9 came
18 out. We were both happy with sort of the results and so
19 again, you know, he wanted to do some more work. I was
20 happy with what he had done and he said, "Let me do some
21 more Angela.

22 "Okay. Do you want to write a mini series?

23 "That's good."

24 Q. What did you talk about with regard to the
25 contractual provisions of that?

1 A. Again I think it fell into the same sort of
2 discussions we'd had; again get it within my DC
3 contract. And I don't even know if we got that
4 specific. We were just happy that we had a success of
5 one book. You know, "let's go and do some more books
6 together."

7 Q. So, did you talk about money at all for it?

8 A. I think we discussed again being able to give
9 him a bit of an advance before he started writing the
10 issues and then -- and then there may have been some
11 parameters of, you know, a minimum amount that he, you
12 know, that he could sort of count on that he wouldn't
13 get any less than something so that he knew at the end
14 of the day he'd have X amount of dollars in his pocket.

15 Q. Did you talk about percentages at all?

16 A. I don't recall. We may have.

17 Q. And was the process for the writing of the
18 Angela mini series the same as the process for Spawn 9?

19 A. I don't think so.

20 Q. How was it different?

21 A. My recollection is that Neil did a full
22 script on Issue 9 and when the Angela mini series
23 started I wasn't the artist on that book. A fellow by
24 the name of Greg Capullo was.

25 And I told Neil -- I was working with Greg at

1 that time. I told Neil how I worked with Greg, which
2 was to give him an outline and let him do the art work
3 and come back.

4 So I think somewhere along in the process of
5 the Angela mini series one or more of those issues got
6 converted into that style of somehow getting the
7 information to Greg and then letting Greg do the art
8 work and then writing it later. So I don't know if all
9 three were done that way or it was mix and match, but I
10 think there was a conversion there.

11 Q. Did you ever apply for a copyright on the
12 Spawn Issue 9 script?

13 MR. KAHN: Do you mean the script and nothing
14 else?

15 MR. ARNTSEN: I mean the script.

16 THE WITNESS: The script as a separate thing?

17 BY MR. ARNTSEN:

18 Q. Yes.

19 A. I don't think so.

20 Q. Did you ever have any discussions with Neil
21 concerning intellectual property rights or respective
22 creative rights with regard to the Angela mini series?

23 A. Only -- only as they related to his DC
24 contract.

25 Q. And have you fully told us your recollection

1 of that?

2 A. Uh-huh.

3 Q. You have to use words.

4 MR. KAHN: You have to answer with words.

5 THE WITNESS: Yes.

6 BY MR. ARNTSEN:

7 Q. When did you first come up with selling
8 Angela toys?

9 A. Is the question when did we first sell the
10 Angela toy?

11 Q. Yes.

12 A. Maybe -- maybe early '94, '95, '93. I'm
13 not -- early to mid '90s.

14 Q. Did you have any discussions with Neil as to
15 whether he was entitled to a share of the royalties for
16 the Angela toys?

17 A. Nothing I recall specifically.

18 Q. Anything you recall generally?

19 A. Just again, you know, "I thought I get paid
20 money when I do stuff like this for DC.

21 "Okay. So just how much is that? Send it
22 over."

23 Q. Did you have any discussions with Neil
24 concerning whether he was entitled to any payment for
25 the reprints of Spawn Issue 9?

1 A. Again I don't know if we talked about it
2 specifically.

3 Q. Was Neil paid?

4 A. I don't know.

5 Q. And the Angela mini series was reprinted into
6 a trade paperback, correct?

7 A. Right.

8 Q. Did you have any discussions with Neil as to
9 if he'd be paid anything for that?

10 A. Again just as it related to how he was used
11 to getting paid on those kinds of books.

12 Q. From DC?

13 A. Right.

14 Q. And you were in agreement with that?

15 A. Well, again I go, "Well, what is it? Give
16 me -- let me see the contract. Let me see it or give me
17 the information." And so he'd give me some numbers
18 sometimes.

19 Q. Did you do anything else to again verify the
20 information?

21 A. Well, I kept prodding Neil, kept asking
22 questions to Neil, kept trying to sort of get the
23 information.

24 I all the time asked if I could actually see
25 this elusive contract and then much later, you know,

1 made some phone calls to sort of verify some of the
2 information.

3 Q. Are you talking about in 1997?

4 A. I'm talking from 1993 onward.

5 Q. With regard to phone calls you made to verify
6 the information?

7 A. To the initial statement of "I need this to
8 sort of match my DC contract." From there the race
9 began.

10 Q. What? The what?

11 A. The race began from there.

12 Q. Okay. And what did you do? Tell me about
13 the race?

14 A. Again from the very beginning, okay, "I don't
15 want to -- I don't want to be any worse off than the DC
16 contract. I need to match that contract.

17 "Okay. What is it? What am I matching?
18 What am I matching?"

19 And then every now and then he'd sort of go,
20 "Well, here's some numbers, some payments if you happen
21 to do a T shirt or you happen to do a toy or if you
22 happen to do a reprint or something." And then I'd get
23 that information, okay, ask some follow-up questions
24 about it.

25 I think there were some initial payments made

1 upon some of that information. And then -- and then as
2 the process went on I started sort of seeing
3 inconsistencies and so I asked sort of more questions
4 and as questions sort of were asked there those
5 inconsistencies became a bit of a problem.

6 Q. What inconsistencies?

7 A. A number of inconsistencies. The
8 inconsistencies of the numbers or the calculations and
9 how he got there and what it was all relevant to and
10 what the definitions were; everything that comes from a
11 normal contract.

12 Q. Can you give me some examples?

13 A. Payments for, say, paperbacks; payments for a
14 toy; payments for characters whether they are in their
15 own books or not. I mean, it's sort of a wide spectrum.

16 Q. What inconsistency do you recall with regard
17 to payments for a trade paperback?

18 A. I don't know specifically right now. I'm
19 sure you're going to show me documents. We can point
20 them out if you'd like later on.

21 Q. But do you have any? It sounds to me like
22 you're referring to inconsistencies in conversations and
23 I'm trying to see what you recall from conversations.

24 A. Right. Well, in conversations Neil giving a
25 number saying that he would get X amount of money for --

1 for a DC job and then later on as I'd get through it
2 didn't sound right to me now given that I had worked at
3 DC.

4 So I'd go, "Well, just sort of be clear here.
5 Angela, there's two of us created that character, so
6 does that number get divided in two?

7 "Oh, yes. Oh, yes. My mistake. Yes, you're
8 right, that number does get divided. Oops."

9 Q. When was that conversation?

10 A. Those conversations unfortunately were pretty
11 much ongoing from about late '93 on.

12 Q. The conversation with regard to Angela being
13 divided in two?

14 A. No. Those conversations in general.

15 Q. Okay. But what I'm trying to do is focus
16 on --

17 A. I don't remember the specific conversation
18 that I'm speaking about.

19 Q. Do you remember any specific conversations in
20 this regard?

21 A. Just asking him again what are the numbers,
22 is there any chance we are ever going to see these
23 contracts? You know, taking him for his word, making
24 the payments, seeing this inconsistency later, asking
25 some questions. And then just sort of going, I've got a

1 bit of a moving target here. It's tough for me to sort
2 of nail what it is I'm supposed to be matching when it
3 seems to be moving. It's elusive to me.

4 Q. And again in what specific context did these
5 come up?

6 A. Conversations over the phone for the most
7 part.

8 Q. Okay. But with regard to what types of
9 rights?

10 For instance, did you have such conversations
11 concerning trade paperbacks?

12 A. Right, the paperbacks.

13 Q. All right. And what did Neil say he got paid
14 from DC, say, with regard to the Angela paperback?

15 A. I don't recall the number. I would have
16 asked him, "How do you get paid," and then he would
17 either have given it to me verbally or sent something to
18 me.

19 Q. Okay. And did something come to you that
20 caused you to question the veracity of that information?

21 A. For Angela? Not really.

22 Q. Okay. Not for Angela. For what?

23 A. For Medieval Spawn and Cog.

24 Q. All right. Tell me about the conversations
25 with Medieval Spawn that caused you to question the

1 veracity of what Neil told you?

2 A. Medieval Spawn is what I would define as a
3 derivative character of something that preexisted. So,
4 there was a Spawn. There's a mytho -- there was sort of
5 a history there and then you do a slight variation on
6 the ongoing theme that preexisted.

7 According to Neil, no matter how slight that
8 is that he is entitled to an accounting price, if you
9 will, to derivative characters. It didn't seem right to
10 me, but again I was taking Neil at his word at that
11 time.

12 Q. And so I guess what I'd like is as best you
13 can recall the conversation you are referring to
14 concerning Neil's position with regard to what he was
15 entitled to for Medieval Spawn?

16 A. It was more that he was entitled to any
17 ownership --

18 Q. Okay.

19 A. -- of any of it. It was awkward that he
20 would have any stake. And I'm saying accounting
21 ownership, not to actual accounting ownership in DC
22 comic books for doing a derivative of an existing
23 character.

24 He assured me that that was indeed correct
25 and then supplied numbers to me either written or

1 verbally and again subsequent payments were made based
2 upon that information.

3 Q. Okay. What did he -- what did he tell you?
4 What numbers did he supply?

5 A. I don't recall the specific numbers.

6 I was -- I was more transfixed on that there
7 would be any numbers attached to a derivative character.

8 Q. So it was your view that -- it was your
9 thought that he wasn't entitled to anything for Medieval
10 Spawn, is that correct?

11 A. Well, I was surprised that his answer was,
12 "With my DC contract, yes, indeed." That's true again
13 that I had told him I'd match the contract. I -- I go,
14 "Okay." You know, I don't have to like it, but okay.

15 Q. All right. Based on your experience with DC
16 Comics, had you had any insights as to how DC treated
17 rights to derivative characters?

18 A. Infinity, Incorporated, the book I did, was
19 essentially made up of the sons and daughters of
20 existing superheros, and so some of those used the same
21 names and costume designs and things like that and I
22 was -- I was never entitled to anything.

23 Q. Of course. But that was on a work for hire
24 basis, correct?

25 A. Correct.

1 Q. You never told Neil that in your view his
2 work in connection with, you know, writing for Image was
3 on a work for hire basis, correct?

4 A. Only in -- only in the confines of his DC
5 contract.

6 Q. What do you mean by that?

7 A. That he goes, "Match my DC contract." So I
8 assumed all these years DC is a work for hire contract,
9 so given that that's what he continued to point at, then
10 we can all sort of assume that all those rights are sort
11 of transferred now into this new job.

12 Q. And did you have any specific discussions
13 with Neil in that regard?

14 A. Again only in, you know, "I want you to match
15 the terms of the DC contract."

16 Q. With regard to the other three guest writers
17 in Spawn 8 through 11, did you ever have any
18 conversations with them concerning whether their work
19 for you was on a work for hire basis?

20 A. Not specifically.

21 Q. Generally?

22 A. Not -- I don't recall.

23 Q. Okay. Do you recall anything in that regard?

24 A. No.

25 Q. Did you have any discussions in connection

1 with the Cogliostro character as to how Neil -- what
2 Neil's rights would be under his DC contract?

3 A. Cogliostro? Neil would supply me with
4 numbers, but he -- and Cogliostro was always a bit of a
5 bone of contention.

6 Q. Why was that?

7 A. Because Neil thought we co-created it and I
8 was more of the mind that I -- I gave it to him, given
9 that he -- he was very sensitive when he was going to
10 write the script as to what I wanted in it, what I would
11 like to see in it, if there was anything I wanted to
12 add, if I had any characters coming through or anything.

13 We just, you know -- so I told him about this
14 Moses character I was going to bring in there. He said,
15 "Oh, I'll help you bring it in there." So I didn't
16 consider that to be the same creative process that's
17 something like Angela.

18 Q. But did you view that Neil had been part of
19 the creative process for Cogliostro?

20 A. Well, maybe, maybe in a slight -- maybe in a
21 slight way because I ignored what he actually wrote
22 thereafter and essentially reinvented the guy
23 afterwards, so --

24 Q. How did you reinvent the guy?

25 A. I thought he was a little too corny, a little

1 blase faire, a little sort of cooky. He's a little bit
2 of a drunk bum who knew something, where Cog, the
3 anti-Moses, is a father figure, should be sort of a like
4 a Harvard graduate. He shouldn't be a buffoon to some
5 extent. He should actually be a guy who's actually like
6 a professor that can actually correct you at any given
7 time and sort of use big words and sort of give, be like
8 an overseer of all the stories.

9 And so what this character was that I wanted
10 never matched my expectations and so I sort of ignored
11 it and moved on and just went in my direction.

12 Q. And what was -- was that direction sort of
13 making him smarter it sounds like what you're saying?

14 A. Changing his costume, changing when he
15 appears, when he doesn't appear, his mannerisms, the way
16 he talks, the way he speaks, what his agenda is. You
17 know, where he comes from, his whole back history, you
18 know, how he relates to Spawn, how he relates to heaven
19 and the earth and the curse and everything else; I added
20 all that.

21 Q. So that wasn't a change so much as an
22 addition, correct?

23 A. No. That was a change.

24 Q. Okay. Describe how it was a change, how it
25 was different from what Neil wrote?

1 A. Well, again let's be clear that Neil wrote
2 after having conversations with me as to how this
3 character would speak and what he was about, so let's
4 just get that on the record.

5 Q. But what I'm talking about, Spawn Issue 9
6 introduces a character named Cogliostro, correct?

7 A. Right.

8 Q. And it's in the script for Spawn Issue 9
9 which Neil wrote, correct?

10 A. Correct.

11 Q. And then I believe you indicated that, and
12 there was a -- you used the character Cogliostro in
13 subsequent works relating to Spawn, correct?

14 A. Correct.

15 Q. And I understood what you were saying earlier
16 that the character that you subsequently used you
17 changed significantly from the Cogliostro character that
18 appears in Spawn Issue 9, is that correct?

19 A. Right.

20 Q. Okay. What were the changes?

21 A. His mannerisms, his body appearance, his
22 physical appearance, whether he would carry animals with
23 him or not, what he spoke of, why he spoke of it.

24 Q. And I guess -- I apologize for interrupting,
25 but I guess what I'd like is specifics. What mannerisms

1 did he have and how did you change them, for instance?

2 A. Instead of -- instead of being a sort of a
3 bum whose concern was getting a 6-pack of Ripple wine,
4 his concern was to be the father image, to actually
5 bring knowledge to people, not to necessarily worry
6 about his own personal drunkard at that stage and to
7 bring insight specifically to the characters around him
8 and more specifically to Spawn and guide him along the
9 path through the 120 issues I've done so far.

10 Q. Did Cogliostro bring insight to Spawn in
11 Spawn Issue 9?

12 A. Not -- not any in the way that I wanted, no.

13 Q. Okay. And what was different about the way
14 you wanted him to do it than it was done in Spawn Issue
15 9?

16 A. Again just that he seemed like a high school
17 graduate instead of a Harvard graduate. So make your
18 inferences from what that means.

19 Q. Okay. You wanted him smarter?

20 A. Right.

21 Q. What other changes did you make? And again
22 I'm looking at specifics rather than generalities.

23 A. I wanted him to be more -- again Moses, Moses
24 coming down the hill with the tablets. It should be
25 revered when you see him. It shouldn't be a drunk, if

1 you will, looking for the next bottle of whiskey, which
2 is sort of what he was in Issue Number 9. So I was
3 looking for grandeur and I didn't feel like I got
4 grandeur.

5 Q. Okay. So you made him grander, correct?

6 A. Correct.

7 Q. Okay. What other changes did you make?

8 A. Grandeur is a big word, so that qualifies a
9 lot. So I'll leave it at that.

10 Q. Why don't you describe the ways you made him
11 grander then?

12 MR. KAHN: Let me just at least for the
13 record object. I think it's been asked and answered --

14 THE WITNESS: Yes, I thought so.

15 MR. KAHN: -- if you look at his transcript
16 in the last ten minutes, Todd's efforts that he made to
17 change the character.

18 MR. ARNTSEN: That's what I'm trying to find
19 out. I don't think we are going over the same ground.
20 I think we are getting some detail, turning general
21 statements into specific statements.

22 MR. KAHN: Maybe so. And the record will
23 speak for itself. I just want to save the record.

24 BY MR. ARNTSEN:

25 Q. How did you go about making him grander?

1 A. Making him smarter, giving considerations to
2 when he appeared, giving him reasons for why he
3 appeared, giving him insight into the mechanisms of sort
4 of all that was going around Spawn, giving him sort of
5 quasi-mystical powers, making him a sort of former Spawn
6 that knew how sort of the curse worked, if you will.
7 Just some examples there.

8 Q. Okay. And Cogliostro appeared in a number of
9 Spawn issues?

10 A. Yeah. Later on in the run, right.

11 Q. During what period of time roughly or what
12 issue range, number range?

13 A. He appears off and on probably starting
14 around the early 20s onward or something. I don't know
15 specific issues, but he's throughout a lot of the
16 issues.

17 Q. A recurring character?

18 A. Right.

19 Q. And the first issue he was in was Issue 9,
20 correct?

21 A. Yes.

22 Q. Now, at some point in time you changed his
23 name, correct?

24 A. Right.

25 Q. Tell me the process that resulted in that?

1 A. Well, I think -- I think -- I think the first
2 change was just a spelling mistake, you know.

3 We give scripts to writers or to letterers
4 and sometimes they work late and they don't pay
5 attention and I don't know. I think -- I think Neil
6 might have had Cagliostro and it got changed to
7 Cogliostro.

8 And again it was sort of a tongue twister
9 sort of name. At some point you get stuck with what the
10 letterer gives you and that was the new name, right, and
11 then later on as we sort of changed him. We had given
12 him a history. We had to give him sort of a full name.
13 Cogliostro is just like Madonna. There's no sort of
14 name there. So we had to give him a sort of a full
15 identity and I think later on we gave him sort of a full
16 blown name that went with it instead of just Cog,
17 Cogliostro.

18 Q. Well, wasn't his initial name called Nicholas
19 Cogliostro?

20 A. I don't know what his first name was.

21 Q. What first name did you give him?

22 A. I don't know.

23 Q. You just recall giving him a first name?

24 A. Right.

25 Q. So what discussions did you have with Neil

1 with regard to payment for Cogliostro in the context of
2 Neil's DC contract?

3 A. Just trying to figure out where Cog would
4 fall in all of this given that he didn't seem to be
5 Angela. So, you know, it was tough for me to sort of
6 use those same numbers as -- as sort of the value of
7 that character, if you will.

8 Q. So what you were disagreeing with is the
9 amount of compensation Neil was entitled to for
10 subsequent uses of Cogliostro?

11 A. Well, the definition of who created that
12 character more specifically.

13 Q. So, was it your position that Neil wasn't
14 entitled to any additional compensation?

15 A. Well, not really. Again I thought -- I
16 thought that again using that he said he had numbers
17 that were put in there no matter what you sort of
18 create, that he was there in Issue Number 9 and although
19 I changed sort of whatever, it would be a smaller number
20 because it wasn't the same process we went through with
21 Angela.

22 Q. Did you and Neil ever agree on that number?

23 A. No.

24 Q. Did you ever make payments to Neil for your
25 uses of the Cogliostro character?

1 A. I don't know specifically.

2 Q. Did you ever make payments to Neil for your
3 uses of the Medieval Spawn character?

4 A. I believe there were some payments made for
5 that.

6 Q. Was Medieval Spawn in any subsequent Spawn
7 issues after Issue 9?

8 A. Yes, I believe so.

9 Q. Do you recall approximately how many?

10 A. Maybe two to four or something.

11 Q. Who came up with the Medieval Spawn name?

12 A. I did.

13 Q. And was Medieval Spawn shown or was he made
14 into action figures?

15 A. Right.

16 Q. Fairly successful action figures?

17 A. It's a relative term, so --

18 Q. Can you answer?

19 A. Well, define "successful."

20 Q. Within the context of the various characters
21 you made into action figures, how did Medieval Spawn
22 come out?

23 A. He did pretty good again as a Spawn.
24 Generally in toys the people like the main characters,
25 so they like Spawn.

1 Q. Cogliostro had a fairly significant role in
2 the TV series, correct?

3 A. Right.

4 Q. Was Cogliostro in the movie?

5 A. Yes.

6 Q. Was Medieval Spawn in the movie?

7 A. No.

8 Q. Was Angela in the movie?

9 A. Not as a -- not as it reflected in what she
10 was in the comic book, so I would say no.

11 Q. Was there a character named Angela in the
12 movie?

13 A. Not I.D.

14 Q. I mean, I was just trying to understand how
15 your answer is different from saying, "No, Angela was
16 not in the movie."

17 What was in the movie that might have been
18 sort of like Angela?

19 A. We put a -- we put a redhead, a redhead in
20 the background at a party as sort of a bit of an
21 in-joke, if you will.

22 Q. Okay. That was it?

23 A. Right.

24 Q. Now, at some point in time did you talk with
25 anyone at DC concerning the terms of Neil's DC contract?

1 A. Not -- not specific to Neil's contract per
2 se.

3 Q. Okay. At some point in time did you talk
4 with anyone at DC about how DC Comics handled derivative
5 characters?

6 A. Right.

7 Q. Who did you talk to when?

8 A. A lady by the name of Terri Cunningham, and
9 that would have probably been maybe, I'm guessing, maybe
10 in '96 some time.

11 Q. Was it a phone call?

12 A. Yes.

13 Q. Did you call her or did she call you?

14 A. No, I called her.

15 Q. Tell me about the conversation?

16 A. Just I wanted, you know, I knew she wasn't
17 able to speak about anybody's contract specifically, so
18 I wouldn't put her in that position. So I wanted to
19 just sort of talk in generalities, you know.

20 "Do you give moneys for derivative characters
21 that are preexisting? And if you do, how does any of
22 that work?"

23 And she explained to me that DC doesn't do
24 that. They don't. If you do Medieval Superman you are
25 entitled to nothing. So, if you do Medieval Batman you

1 are entitled to nothing.

2 Q. Were those her words with regard to Medieval
3 Superman, Medieval Batman?

4 A. No. I go, "Let me give you an example. If I
5 did Aqua -- if I did Aqua Batman would I get anything?
6 If I did Caveman Superman, if I did a derivative with
7 any sort of name, you know, Cowboy Billy Superman, would
8 I get -- would I get anything?"

9 And she was like, "No, no. We own Superman,
10 so -- we own Batman."

11 Q. Did she explain any circumstances in which DC
12 would pay creative payments for derivative characters?

13 A. If you're going into -- she didn't go into it
14 in any detail, no.

15 Q. But I guess what I'm saying is was it just a
16 flat out "if it's a derivative of one of our characters
17 we don't pay anything" or was there some nuance?

18 A. I think she mentioned later that if there was
19 an extensive reworking, if somebody took a name of
20 something and reworked it, and at that point I believe
21 potentially Neil's Sandman actually became an example --
22 she didn't know I was phoning on behalf of Neil -- that
23 there was a character from the '40s called Sandman that
24 had that name and then the character that Neil wrote had
25 that name but nobody would look at those two and look at

1 their history and what they were about and the
2 background, nobody would make a confusion of them other
3 than they both sort of had the same name. And so in
4 that case, although it was the same name of a character,
5 as long as there was an extensive reworking of something
6 and it appeared to be a new character, then -- then that
7 was a -- they had a few examples of that within the
8 confines of their stables.

9 Q. And was this all within the same
10 conversation?

11 A. Right.

12 Q. And did you specifically ask anyone at DC
13 about any provisions in Neil's agreements with DC with
14 regard to derivative characters?

15 A. No. Because again I knew that people weren't
16 supposed to talk about other people's contracts and I
17 wouldn't put them into that position.

18 Q. With regard to DC's treatment of derivative
19 characters generally, did you speak with anyone else at
20 DC other than Terri Cunningham?

21 A. No. Terri was the person who did most of the
22 contracts, so it eventually fell on her desk to finalize
23 most of the contracts.

24 Q. And did you have more than one conversation
25 with Terri Cunningham on this subject?

1 A. Of derivative characters?

2 Q. Correct.

3 A. No. That was -- that was the gist of that.

4 Q. So, if I understand the substance of what she
5 told you, it's that DC would not pay for derivative
6 characters unless there was an extensive reworking of
7 the character, is that correct?

8 A. Right.

9 Q. Now, at some point in time some contention
10 arose between you and Neil concerning what Neil was
11 being paid for the work he had done on the Spawn and
12 Angela comics, correct?

13 A. Yes. We -- we -- we didn't see eye to eye on
14 some issues, right.

15 Q. Okay. When did that first come up?

16 A. I don't know. Maybe -- maybe '94 or
17 something.

18 Q. In what context, do you recall?

19 A. I think it was -- I think it was -- it was
20 either in -- in the context of a toy maybe or a foreign
21 reprint possibly.

22 Q. Did you ever have any conversations with Neil
23 concerning, you know, creative credit for what Neil had
24 done or was going to do?

25 A. Only -- only in regards to his contract and

1 in some of the conversation we had going back and forth
2 over those years.

3 Q. Okay. Tell me what discussions you had with
4 him in that regard again with the idea of creative
5 credit and creator's rights generally in giving credit
6 to creators and that sort of subject?

7 A. Again it was not necessarily for creative
8 rights at -- "This is what I get at DC." So again if
9 you create something and somebody maybe appears
10 subsequently in their name thing, they sometimes put a
11 vanity credit some place there to sort of acknowledge
12 somebody's time on something.

13 Q. Did you ever talk to Neil about this in any
14 context other than Neil's DC contract?

15 A. Yes. We probably had ongoing conversation
16 about it.

17 Q. Okay. What types of conversations, again
18 putting aside --

19 A. I don't recall the specifics. I know that --
20 that my mind tells me that those were part of the
21 conversations, but I don't -- I don't recall
22 specifically.

23 Q. Was one of the things Image was holding
24 itself out as is as a business that respected creators
25 rights perhaps more than the more established comic book

1 companies?

2 A. Right.

3 Q. And did you have those kinds of discussions
4 with Neil?

5 A. Just clarify. Who are you asking the
6 question to? Are you asking it to Todd McFarlane the
7 head of a toy company, the head of publishing, part
8 owner of Image comic books or the individual? So will
9 you ask your question and ask me which one of those
10 people you just asked the question to?

11 Q. They are all sitting in front of me, so --

12 A. But they each have a different agenda during
13 their day, a different task to accomplish during the
14 day. I'm sure you do as a father and a lawyer.

15 Q. Well, I guess what I do with regard to this,
16 any conversations you had with Neil in this regard, if
17 you could answer the question as such and say, "Well,
18 this was in my capacity as."

19 A. Okay.

20 Q. Such as, I think that makes a lot more
21 sense --

22 A. Okay.

23 Q. -- rather than go through and ask --

24 A. Okay.

25 Q. -- the same question six different times.

1 MR. KAHN: Good idea.

2 THE WITNESS: That's fine.

3 BY MR. ARNTSEN:

4 Q. Are you comfortable proceeding that way?

5 A. Yes.

6 Q. And so feel free to put a preamble in. You
7 have to be clear; "This was in my capacity as blank."

8 A. Okay. That's fair.

9 Q. Okay. So what discussions did you have with
10 Neil with regard to this creator's rights issue putting
11 aside the, you know, "the same as my DC Comics" issue?

12 A. As the head of Todd McFarlane Productions
13 who's the one requesting Neil to do art work, that
14 again, you know, asking him to come on board, help me
15 write a comic book and if, you know, you have any
16 special requests that go along with that then bring them
17 to the forefront and if I'm capable of delivering those
18 then and we come to an agreement, then we'll get there.

19 Q. Do you recall any special requests that he
20 made in response to that offer?

21 A. Not at the beginning.

22 Q. Okay. How about later on?

23 A. Later he was concerned talking to me as the
24 head of Todd McFarlane Productions about how some of the
25 royalty would break down and, you know, how certain

1 things would be credited would be one way or another.

2 Q. And what was your response?

3 A. "Well, what would you like, Neil?"

4 Q. Okay. And did he tell you what he'd like?

5 A. Okay.

6 Q. And what was your response?

7 A. "Well, okay. We can sort all this out, come
8 to some agreement with all of this and we can move
9 forward and I'll be happy."

10 Q. Okay. And were you able to sort it out and
11 come to agreement on it?

12 A. I'm going to guess because Neil is suing me
13 today that the answer is probably no.

14 Q. Okay. What areas weren't you able to come to
15 agreement on?

16 A. You know, I'd say right now him and I
17 probably aren't satisfied on too many of them, so we
18 probably have a disagreement on most of it today.

19 Q. And I guess really what I'm looking for are
20 the specific subjects of disagreement that you tried to
21 work through this in your capacity as head of Todd
22 McFarlane Productions and weren't able to.

23 And I'm not limiting it. I'm just following
24 up on your answer that you gave as the head of Todd
25 McFarlane Productions. If a different hat is

1 appropriate, put it on and tell me you're putting it on.

2 A. Right. Can I -- can I simplify this even
3 more?

4 Q. Yes.

5 A. Can we assume that if I don't say anything it
6 is as the head of Todd McFarlane Productions because
7 99.9 if not 100 percent of this is as Todd McFarlane
8 Productions.

9 Q. Okay.

10 A. So, unless I stipulate something different,
11 if I talk about myself I'm talking about myself as the
12 person running Todd McFarlane Productions.

13 Q. Okay. Because that was the position you were
14 in in the overwhelming majority of your interactions
15 with Neil Gaiman?

16 A. Correct.

17 Q. Okay. That's fine.

18 A. Okay. So, excuse me. So could you repeat
19 the question?

20 MR. KAHN: The question had to do with the
21 areas of disagreement between -- specific areas that you
22 tried to reach agreement on but couldn't.

23 BY MR. ARNTSEN:

24 Q. Right. Right.

25 A. Royalties and I think some credit lines.

1 Q. Any other general areas?

2 A. Well, I think including this case here
3 somebody's talking about copyrights now.

4 Q. First talking about credit lines, what
5 disagreements do you recall arising between you and Neil
6 with regard to credit lines?

7 A. Well, I wouldn't say it was a disagreement.
8 It was just again, you know, "If anything goes out that
9 I had done, can you make sure that my name is -- is
10 affixed to it some place, you know. I'd hate to see
11 something and not have my name somewhere on it, so make
12 sure that you acknowledge my existence on this stuff."

13 Q. And did you dispute that?

14 A. Not really.

15 Q. Okay. So to the extent that didn't happen,
16 was it an oversight?

17 A. Yes. Probably.

18 Q. Do you recall any situations where you did
19 not put or associate Neil's name with something he'd
20 created and did so deliberately?

21 A. Well, the credit is determined by sort of the
22 extent of the use of the character.

23 Q. Right.

24 A. So again you can have a hundred characters in
25 a book, you know, and sort of consider all those to be

1 equal. So, again it was the -- the credits due were
2 dependent upon the work that a person had done or the
3 extent of a credit, a character being used in a book,
4 and again there's varying sort of definitions as to how
5 you get to each one of those.

6 Q. Well, for instance, Neil wrote a scene for
7 Spawn 26, correct?

8 A. Right.

9 Q. Did you give him credit for that?

10 A. No.

11 Q. Why not?

12 A. He asked me not to.

13 Q. He explicitly asked you not to?

14 A. Yes.

15 Q. And was that in a phone call?

16 A. No. I think that was actually in person.

17 Q. Do you recall where this meeting was?

18 A. If it was -- if it was in person it would
19 have been at one of the Oakland comic conventions and if
20 not, it would have been over the phone.

21 Q. And as best you -- what can you recall as
22 best you can of this conversation in which he asked you
23 not to give him attribution for Spawn 26?

24 A. We were talking at that point about the
25 Angela mini series. Again both of us were satisfied

1 with the work and the end result of the publication of
2 Issue 9. And so Neil requested to do more work. I took
3 that as a sign that he was satisfied, asking me to do
4 more work.

5 And so we talked about another project. The
6 one that he suggested, which was obvious, was to do an
7 Angela mini series. So he began work on the Angela mini
8 series with Greg Capullo, the artist.

9 In my capacity as a writer in the confines of
10 my comic book, I -- I have a tendency to reference prior
11 issues or foreshadow things that are coming. The trick
12 in comic books is you put an asterisk in a word balloon,
13 and if you've read comic books then you know that if it
14 goes like sort of a footnote you go to it and it says,
15 you know, "See last issue." See the upcoming issue, see
16 ten issues ago. I mean, there's always a footnote
17 there.

18 I had explained to Neil that we were going to
19 try to do something to sort of, you know, get some of
20 the readers from Spawn to sort of pay attention to the
21 Angela mini series. And so I go, "You know, sort of
22 write a lob, if you will, an asterisk, if you will, into
23 the mini series."

24 Neil requested since she was doing a thing,
25 "Well, could I write that?"

1 "No." And I was like, "Well, that's okay.
2 It's my book I can write it. Don't worry about it."

3 And he said, "No, no, no. I feel part of
4 this mini series and, you know, can I write it and you
5 can use it if you want, and if you like it, don't worry
6 about it. Just let me sort of do it. You don't have to
7 pay me. You don't have to give me any credit. I don't
8 have to do anything. I just sort of have an attachment
9 here to Angela."

10 And I said, "Okay. Cool. You want to do a
11 couple of pages for me?" And he wrote a couple of pages
12 and we put them in there and again sort of living up to
13 his request.

14 And he sort of didn't want to interfere with
15 my continuity by making it look like he was putting his
16 thumbprint on it.

17 And those pages at the end of it or somewhere
18 within it have an asterisk that say look for the
19 upcoming Angela mini series that was either out on the
20 stands just at that time or just coming out or they were
21 pretty close. So you were able to give it a little bit
22 of a bump, if you will.

23 Q. Did you have any creative involvement in the
24 Angela mini series?

25 A. Not in the traditional sense I would with

1 Spawn.

2 Q. In what sense did you have creative
3 involvement with the Angela mini series?

4 A. Just having conversations with Neil to see
5 what he wanted to do, looking over the scripts, looking
6 at the pencils, looking at the inks. I mean, I'd become
7 essentially the editor at this point and just looking at
8 all the steps of the book and sort of going through the
9 plan, if you will.

10 Q. Turning back to the Spawn 26 again, did Neil
11 expressly ask that you not give to him credit for that?

12 A. He says, "You don't have to give me credit."

13 Q. Okay. As best you can recall, those were his
14 words?

15 A. Right.

16 Q. Did any issue come up with regard to credit
17 lines in connection with the Medieval Spawn or
18 Cogliostro characters between you and Neil?

19 A. Not that I recall.

20 Q. Okay.

21 A. Maybe -- maybe in a toy comic book one time.

22 Q. What do you recall in that regard?

23 A. That if he wanted me to put a "created by" or
24 something. I don't recall if I did or didn't. But the
25 first toy came with a comic book.

1 Q. Excuse me?

2 A. The first toy of -- that I put out came with
3 comic books.

4 Q. Okay.

5 A. So there was a comic book, Medieval Spawn.
6 So I don't recall if we put any by-line in there or not.

7 Q. And do you recall that Neil asked for credit
8 with that?

9 A. Right. Saying that again you'd get this with
10 DC, derivative characters and creative stuff. So I
11 said, "Okay. I'll put it in there, yes."

12 Q. And so you did?

13 A. I don't know. So we'd have to look at that
14 comic book.

15 Q. Okay. And what was the comic book?

16 A. It was -- there was -- you get the action
17 figure and then instead of it just being cardboard you
18 rip and throw away in the garbage, we inserted a comic
19 book in there.

20 Q. Okay. And what was this comic book called?

21 A. I think it was just called Spawn.

22 Q. Okay.

23 A. I don't know. I think that's what the cover
24 said.

25 Q. Do you ever recall any disputes arising

1 between you and Neil associated with credit lines with
2 regard to Cogliostro?

3 A. Not that I recall.

4 Q. What dispute arose between you and Neil with
5 regard to copyrights prior to the filing of this
6 lawsuit?

7 A. None.

8 Q. Okay. So we covered the disputes that arose
9 between you and Neil other than those that relate to
10 royalties?

11 A. What was the question?

12 Q. Have we covered the disputes, that arose
13 between you and Neil other than disputes that relate to
14 royalties?

15 And what I mean by that, we have discussed
16 disputes that have related to royalties, but I just want
17 to make sure that we have fully covered any other kind
18 of disputes and now we'll focus on the royalty disputes.

19 A. No, I think it was mostly the focus of our
20 disagreements, unfortunately.

21 Q. What disagreements did you have? And again
22 what I'd like you to do is just sort of run through them
23 chronologically and don't repeat what you've testified
24 to already, but disputes you had with regard to
25 royalties with Neil.

1 A. I -- I think that it was -- they were just
2 sort of ongoing conversations of, you know, "If you're
3 going to do this, then how would I get paid?" And we
4 were always trying to figure out how to make those
5 payments.

6 And again I'd go, "How do you want to be
7 paid?" And then he would give me those terms, you know,
8 based on the DC information. And in some instances we
9 applied them and sometimes, you know, again there was
10 inconsistencies or disagreement that we couldn't come
11 to. So, sometimes we did it, sometimes we didn't.

12 Q. And what would happen when you didn't?

13 A. I'd usually get a phone call from Neil.

14 Q. If you didn't agree with his view, would you
15 pay him something or would you pay him nothing?

16 A. I think every -- every instance sort of had
17 it's own unique moment depending on where we were in the
18 relationship at that given time.

19 Q. What I'd like to do is just kind of work
20 through chronologically the disputes that arose over
21 royalties as best you can. What was the first problem
22 that arose?

23 A. When did it occur you say?

24 MR. KAHN: What was the first problem?

25 MR. ARNTSEN: Yes.

1 Q. I think you testified earlier you thought
2 that disputes first started coming up around '94
3 sometime and I'm just trying to get a chronology of
4 them.

5 A. It may have been -- and I wouldn't -- in this
6 case I wouldn't use the word "dispute." It would just
7 be the conversation coming up about, "Hey, there's now a
8 toy and so do I get paid? Am I going to get any money
9 from that toy?"

10 Q. Is that the Angela toy?

11 A. No. This was the Medieval Spawn toy.

12 Q. Okay. And how was that resolved?

13 A. I asked him how he'd get paid from a
14 derivative character with toy merchandising and he must
15 have given me a formula because I know some payment was
16 made early on.

17 Q. Do you recall whether you paid him according
18 to the formula he gave you or --

19 A. Yes.

20 Q. -- or on some other basis?

21 A. No. I think it was on the formula he gave
22 me.

23 Q. Okay. That was on the Medieval Spawn II?

24 A. Right.

25 Q. Okay. What was to the best you recall the

1 next dispute that arose?

2 A. I wouldn't use "dispute," you know. Inquiry.

3 Q. Inquiry.

4 A. That's a better word.

5 Maybe -- maybe the Angela figure came out
6 maybe in the next series.

7 Q. Okay. And how was that resolved?

8 A. Pretty much the same way. You know, "How
9 would you get paid for a new character and what's the
10 formula?" And then I think there may have been the
11 payment based on that conversation and those formulas.

12 Q. So, as best you can recall, did you pay him
13 based on the formula he gave to you or on some other
14 basis?

15 A. No, I think on the ones he gave to me.

16 Q. Okay. And that was for the first Angela toy?

17 A. Yes.

18 Q. Okay. Were there more than one Angela toy?

19 A. There was a 13 inch Angela figure later on.
20 Maybe a year later or something.

21 Q. Okay. Did you pay Neil for that on the same
22 formula?

23 A. I don't know the specifics of that, but I
24 believe a payment was made for -- for a 13 inch toy on
25 it.

1 Q. And on the same formula that Neil gave to
2 you?

3 A. I don't know. So it would depend on when we
4 paid it, so --

5 Q. Was there a Cosmic Angela figure?

6 A. Right.

7 Q. Is that what you're referring to?

8 A. No.

9 Q. Or is that a third one?

10 A. No. The 13 inch Angela.

11 Q. Okay?

12 A. That was just sort of a bigger version of the
13 first one.

14 Q. Were there other Angela toys?

15 A. No. Those were the only two.

16 Q. No Cosmic Angela?

17 A. Oh, that would be a derivative of Angela,
18 wouldn't it?

19 Q. Yes. And did you pay Neil anything for that?

20 A. No. Because -- because -- I don't know if
21 that's true. I would have to say I don't know.

22 Q. You don't know if you paid Neil anything for
23 that?

24 A. No.

25 MR. KAHN: Let me at least note we produced

1 and Neil has it an actual royalty sheet in '97 that
2 shows calculations based on something for all of these
3 different items.

4 MR. ARNTSEN: Uh-huh.

5 MR. KAHN: And if you want to -- if he
6 doesn't remember, you can show him that.

7 MR. ARNTSEN: No. Oh, no. I understand
8 that.

9 Q. Were there any other derivative Angela toys?

10 A. I don't think so.

11 Q. Okay. There's a Red Angela or --

12 A. Red Angela. There was a Red Angela, right,
13 right.

14 Q. Did you pay Neil for that, do you know?

15 A. I don't know.

16 Q. Okay. Were there any Cogliostro toys?

17 A. One.

18 Q. Did you pay Neil for that?

19 A. I don't know.

20 Q. Do you recall -- do you recall Neil making an
21 inquiry about that?

22 A. Yes.

23 Q. What do you recall in that regard?

24 A. "How -- how am I going to get paid on this?"

25 Okay. Remember, we have sort of a slight variation on

1 like where Cog stands in all this. And so Cog might
2 have -- might have been one of those formulas that may
3 or may not have made sense to both of us collectively,
4 so I don't know if we paid on Cog one way or the other.

5 Q. So you may have asked -- he may have and
6 asked and you said, "Well, we disagree on this" and that
7 was where it was left?

8 A. Yes. I don't recall.

9 Q. Okay. Have we covered as best we can your
10 conversation, your discussions about it?

11 A. We are going chronologically now, right?

12 MR. KAHN: He's referring just to this
13 Cogliostro toy.

14 THE WITNESS: Oh, I see.

15 He may have brought it up in subsequent
16 conversations.

17 BY MR. ARNTSEN:

18 Q. Okay. Do you have any specific recollection
19 of that?

20 A. No.

21 Q. Okay. What was -- so now what we have --
22 have we covered the inquiries relating to toys or are
23 there some more?

24 A. No. I think that's -- I think that covers
25 most of it.

1 Q. We sort of started chronologically and then
2 we sort of went to subject matter.

3 Now, going back to chronologically, what
4 other inquiries or disputes arose?

5 A. Specific to what now?

6 Q. To -- with regard to royalty payments for
7 Neil. I think we've been talking about toys so far.

8 A. So another category outside of toys?

9 Q. Yes. Any other disputes in any other
10 categories?

11 A. Well, inquiries. Disputes, I don't know if
12 we are at a full fledged dispute at this point.

13 Q. Inquiries.

14 A. We got to dispute eventually.

15 Q. Yes.

16 A. I think that through the confines of
17 licensing some of the Spawn products there were trading
18 cards or odds and ends, things that were -- that were
19 not comic books that every now and then he needed to ask
20 about or he'd see or we'd talk about or something.

21 Q. And how were those resolved?

22 A. I don't know. Like I said, sometimes there
23 was payments and sometimes there weren't, so, you know,
24 somebody would have to show me paperwork and then I'll
25 be able to tell you how they were solved. I don't know

1 how every conversation was solved or not solved.

2 Q. Okay.

3 A. Some were and some weren't.

4 Q. Okay. Did any issues occur -- inquiries with
5 regard to royalty payments for reprints?

6 A. Yes, I believe so.

7 Q. Okay. What do you recall in that regard?

8 A. Well, again the conversations are becoming a
9 little repetitive at this point. It's just insert blank
10 into, you know. "Oh, Todd, you know, how is it going to
11 work for this product?" And so insert whatever product
12 you want, toy, comic books, trade paperbacks, insert
13 whatever you want.

14 "And so how do you think it should be
15 solved," you know. Well, again, you know, most of the
16 time we are talking about the DC contracts. "Well, how
17 does it work? Give me the numbers." And we were trying
18 to work from those numbers.

19 Just again as time went by those numbers at
20 times either began to move or given that we were
21 starting to get into not specific conversations but
22 again we were starting to get into sort of bigger
23 generality of our not seeing eye to eye that we were
24 starting to head towards not worrying about solving
25 individual problems. Let's just see if some day we can

1 actually solve the big enchilada as a whole. And so I
2 don't know if those inquiries were tied to a specific
3 need or an overall need.

4 Q. So at some point in time did you sort of
5 refocus your efforts from solving -- from dealing with
6 specific inquiries to saying, "Look, can we reach a
7 global resolution of these issues so that we can stop
8 squabbling over them?"

9 A. Yes, I think so.

10 Q. Okay. How did that come about?

11 A. How did that come about?

12 Q. Yes.

13 A. I'm getting tired of Neil phoning all the
14 time really, so it's like, you know, and there's only
15 one way to keep him quiet; just sort of come to some
16 resolution of what it is he keeps phoning about.

17 Q. Okay. So how did you go about trying to
18 accomplish that?

19 A. You know, I think initially Neil and I may
20 have had some conversations together. Given that over
21 time that didn't really solve the dispute, then Larry
22 Marder got brought into it sort of. I think we were
23 hoping if we put somebody between the two of us it would
24 be beneficial to somebody to come in there looking at
25 the two boys and sort of going, "There's a way we can

1 sort of figure this out."

2 So Larry became involved. Later on even with
3 Larry in there, he wasn't able to sort of crack that nut
4 and so it went back to sort of Neil and I sort of going
5 at it again, if you will, and trying to sort of come to
6 some resolution.

7 Q. How did it -- who got Larry involved, you or
8 Neil?

9 A. I don't know. I probably -- I'd probably say
10 I may have suggested it possibly, yes.

11 Q. Okay. And what generally was the framework
12 of the deal you were trying to work out?

13 A. With Neil at that time?

14 Q. Yes.

15 A. Oh, that actually was the question of the
16 day, what was it we were actually all talking about
17 because we couldn't seem to get a handle on it.

18 So Larry's task was to sort of go, "What is
19 it that you think is the problem here, Neil? What are
20 your concerns? What are your concerns, Todd? Is there
21 some place that we can find common ground?" And then
22 eventually sort of plow our way through it. So I think
23 that was sort of the bigger task as to what are we even
24 talking about here.

25 Q. And what were your concerns?

1 A. What were my concerns? Wanting more than
2 anything else to have Spawn lock, stock and barrel.
3 Have my baby back whole. Not have a sliver of it
4 existing some place that I somehow can't control.

5 Q. All right. Any other concerns?

6 A. Having again control over Cogliostro, who I
7 felt was a character that I for all intents and purposes
8 fed to Neil.

9 And then Angela, I sort of understood Angela.
10 I understood Angela. I don't think Angela in theory was
11 much of a -- of a conflict really other than accounting,
12 but the theory I don't think was ever a problem.

13 Q. And what was the theory?

14 A. That within the confines of doing work on a
15 comic book that if somebody creates a new character that
16 is used subsequently that there's certain entitlements
17 to accounting rights. Not intellectual rights but
18 accounting rights based on the usage, dependent upon
19 what company you're working for or not working for. So
20 I tried to use some of that. So I've been involved in
21 that at Marvel and DC.

22 Q. Who in your view had the intellectual rights
23 to Angela?

24 A. I did.

25 Q. And based on what?

1 A. Based on Neil saying, "Could you match my DC
2 contract?" which maybe was a bad assumption. I guess
3 we'll find out later. I'm betting that there's no
4 contract out there in which they give the trademarks or
5 copyrights to the individual free-lancers, and given
6 that he wanted me to match the contract, I bet you
7 paragraph one says, "This is a work for hire contract."

8 (Whereupon, a short recess was then had at
9 4:26 p.m. until 4:30 p.m.)

10 BY MR. ARNTSEN:

11 Q. So we are talking about the process where you
12 and Neil are trying to work out a sort of global
13 resolution, correct?

14 A. Correct. All right.

15 Q. And initially Larry Marder is involved in
16 that in trying to mediate a deal, correct?

17 A. I wouldn't use "initially," but he comes into
18 the process.

19 Q. He comes into the process. And your
20 primary -- your first concern was getting complete
21 control over Medieval Spawn, correct?

22 A. Right.

23 Q. And you also wanted control over Cogliostro,
24 correct?

25 A. Right.

1 Q. And in your view kind of, if I understand
2 correctly, you didn't view any real conceptual
3 disagreement between you and Neil with regard to rights
4 to Angela, is that correct?

5 A. Right generally.

6 Q. I mean, you have to work out the specific
7 accounting issues?

8 A. Right. The devil is in the details.

9 Q. Right. But in general terms you thought that
10 that was probably --

11 A. Yes.

12 Q. Okay. And then it was just an issue of
13 accounting issues: One, past payments and, two, basis
14 for future payments, correct?

15 A. Right.

16 Q. Any other issues?

17 A. In regards to?

18 Q. This global resolution with Neil.

19 A. I think it was inclusive. I mean, again he
20 wanted it to be inclusive. We both actually, I believe,
21 wanted it to be inclusive. We didn't want to leave any
22 piece on the table so that it would start this.

23 So I -- I believe that the conversation,
24 those global conversations were trying to not exclude
25 actually anything that -- that when we got to that

1 resolution we would both be one hundred percent
2 satisfied with how we got there or at least equally
3 dissatisfied, if you will.

4 Q. Right. And so at least again initially there
5 were sort of the three topics where the three characters
6 that were in Spawn 9, Medieval Spawn, Cogliostro, Angela
7 and sort of intellectual and accounting issues relating
8 to those characters, correct?

9 A. I don't know the intellectual was ever a big
10 hot topic. It was -- it was mostly accounting. It was
11 mostly accounting issues.

12 Q. Well, for instance, with Medieval Spawn and
13 Cogliostro you wanted the intellectual issues sort of
14 wrapped up in your favor, correct?

15 A. Right.

16 Q. Now --

17 MR. KAHN: Counsel, just so we are clear when
18 we read this transcript, even at trial, when you say the
19 intellectual issues mean intellectual property issues?

20 MR. ARNTSEN: Yes.

21 MR. KAHN: Or are you talking about something
22 else?

23 MR. ARNTSEN: No. Intellectual property
24 issues. I used his phrase.

25 MR. KAHN: Right.

1 BY MR. ARNTSEN:

2 Q. Now, at some point in time a character called
3 Miracleman came into the mix, correct?

4 A. Correct.

5 Q. And, as best I can recall, you sort of
6 offered up Miracleman as something to Neil in connection
7 with a global resolution, is that correct?

8 A. Yes.

9 Q. Okay. Tell me about Miracleman and how you
10 acquired rights to Miracleman?

11 A. There's a company called Eclipse comics that
12 published a lot of comic books. They must have -- must
13 have had some financial difficulties because at some
14 point they went into bankruptcy and -- and within the
15 confines of it going into bankruptcy some of the books
16 and the properties that they had in the past were part
17 of what the assets were that you would potentially be
18 bidding on in that bankruptcy hearing or auction or -- I
19 don't even know what it officially was called. And
20 within the confines of that then in talking about Terry
21 Fitzgerald, you know, I went, "Hey, Eclipse is up. You
22 know, there's some cool characters in there. You know,
23 we should sort of stick our nose in and see -- see what
24 sort of comes out of it."

25 I think they held a telephone auction. A

1 handful of people were on it. I don't believe they ID'd
2 anybody. And just to make sure they didn't, I think I
3 even had Terry doing the bidding for me so they didn't
4 think big Daddy Warbucks is here.

5 And so there was a sort of a quick, fairly
6 quick auction and I ended up winning the auction and all
7 the -- all of the provisions that came with it through
8 the bankruptcy trustee that was presiding over it.

9 Q. And what did you get in that auction?

10 A. Physically it was like some reprints of comic
11 books or inventory of comic books. I think there was
12 some trading cards. There may have been a little bit of
13 film. Just sort of knickknacks. I think they were just
14 sort of clearing out Eclipse's warehouse and whatever
15 had dust on it that sort of went, the whole kit and
16 kaboodle at that point.

17 Q. And how about other than physical things?

18 A. Then the intellectual properties that went
19 with it, the trademarks and properties that went with
20 the auction that they said there were trademarks and
21 copyrights to some of the characters that went with it.
22 So those were sort of more interesting to me than back
23 issues of books that nobody cared about.

24 Q. And what rights did you acquire from the
25 Eclipse bankruptcy? And I'm talking about intellectual

1 property rights to the Miracleman character.

2 A. The -- the paperwork I think said trademark
3 and copyright.

4 Q. And so was it a full complete copyright or
5 was it a joint ownership or what were you getting?

6 A. I think the paperwork didn't break it down at
7 that point.

8 Q. So, did you know whether anyone else had
9 trademark or copyright rights to Miracleman?

10 A. No.

11 Q. Okay. You just got what Eclipse had?

12 A. Right.

13 Q. Okay. And when did you get these rights?

14 A. I don't know. '95, '96. Some -- some place
15 in the mid '90s.

16 Q. Did you ever do anything with them?

17 A. Some of them. You know, not a lot but some
18 of them.

19 Some of them I -- I did -- I think I did a
20 book called Total Eclipse and put some of the
21 characters -- revamped some of the characters and put
22 them in there, did some art work -- art work, gave some
23 back history to it.

24 Q. How about the Miracleman character?

25 A. I don't think he was in that book, so --

1 Q. Did you do anything with regard to the
2 Miracleman character after you acquired the rights out
3 of the Eclipse bankruptcy?

4 A. Not initially, no.

5 Q. And what caused you to believe that Neil
6 Gaiman might be interested in Miracleman rights?

7 A. I was aware that again the Miracleman comic
8 book that was published by Eclipse had a number of
9 issues and a couple of those issues were done by Neil.
10 And so he had done some of it.

11 I may have read some place where he may have
12 said that the company went belly up before he was able
13 to finish his story or something. So, you know,
14 somewhere along the line I had heard sort of Neil
15 mention the character before.

16 Q. Okay. So what were your thoughts with regard
17 to putting Miracleman into the mix in your attempt to
18 resolve your issues with Neil?

19 A. Well, again I was -- I was hoping that there
20 may be a wild card in the deck called Miracleman that
21 may or may not have some value, and so if we sort of hit
22 some snag where we couldn't resolve some of the issues
23 that maybe there is a sort of a more non-traditional way
24 to resolve it by going -- let's do a -- let's do a
25 character swap or a hostage swapping, if you will, you

1 know, of some of the characters. And so Miracleman
2 potentially became -- became that.

3 Q. Have you finished your answer? I'm sorry. I
4 thought it was a "became the."

5 MR. KAHN: When he stops talking he's
6 finished.

7 BY MR. ARNTSEN:

8 Q. So, first with regard to sort of character
9 issues, non-percentage, non-money issues, did you --
10 were you and Neil able to work out a general agreement
11 with regard to characters?

12 A. No.

13 Q. Okay. What was your position?

14 A. My -- my position was that -- and I think it
15 was -- early on I think it was, I'm hoping, close to
16 Neil's, which was to resolve all the global matters.

17 And so I know that as we -- as we got pretty
18 close, I think we came fairly close, that we sort of
19 laid all the cards out and said, okay, here's a value
20 here, here's a value here. You know, my -- my intent
21 was to get Spawn back. I want Spawn. I mean, this
22 is -- at this point I have got a movie coming out. I
23 have got a TV show and somehow I don't own this guy
24 lock, stock and barrel. I've got to get my baby back.

25 So I'm trying to -- I'm trying to sort of go,

1 "Well, okay. I know you got sort of derivative rights
2 to contracts. So how do I get it back?" And, you know,
3 I'm in no -- I didn't know whether we were going to be
4 able to resolve it monetarily, so maybe it's like --
5 maybe he -- there's a piece of a baby out there that he
6 might like and we could -- we could come to some
7 agreement and I think that was overall the intent that
8 we were hoping for is to lay all the cards out and see
9 if there's some way to mix and match it.

10 Q. Was Medieval Spawn in the movie?

11 A. No.

12 Q. Was he in the TV show?

13 A. In the TV? Maybe for a brief moment in one
14 episode.

15 Q. Okay. So, what was -- what was the sticking
16 point that kept the deal from getting resolved?

17 A. From my perspective it was -- it was -- it
18 was Medieval Spawn.

19 Q. But was Neil willing to essentially convey
20 any rights he would have to Medieval Spawn to you as
21 part of the deal?

22 A. Yes, I think so. We had those conversations,
23 right.

24 Q. Okay. So what kept the deal from getting
25 closed?

1 A. Well, I'm going to tell you because now we're
2 going to get to the heart of the matter here.

3 Q. All right.

4 A. That -- that in my follow-up conversation
5 with Terri Cunningham she told me that what Neil was
6 dangling over me essentially -- now she didn't use those
7 terms. Let's talk about a derivative character. That
8 was what was being dangled over my head, which was a
9 derivative character of something that I had created --
10 that essentially using the DC contract that he kept
11 pointing to, that essentially he never had those rights.
12 So the thing that was of the most value that he kept
13 holding against me essentially from my perspective, from
14 my perspective I never had. And so everything up to
15 that point was based on trying to get it back, my baby
16 back. And I felt -- I found out that I had my baby all
17 along. And so those were the moments where if Neil was
18 ever upset, I was equally upset.

19 Q. And does this -- is this that phone
20 conference with Terri Cunningham that you testified to
21 earlier?

22 A. Right.

23 Q. That was the only -- that's the only
24 communication you had in this regard?

25 A. Right.

1 Q. Okay. And so you had this conversation with
2 Terri Cunningham and did that change your -- what you
3 were willing to do as part of the deal?

4 A. It changed. It changed. I don't know if it
5 overly changed the deal. I may have made some
6 modification, but it -- it -- it changed my willingness
7 that -- that -- but again at this point in spite of
8 my -- my better judgment I just wanted this to be over
9 as much as Neil Gaiman wanted this to be over.

10 Q. All right. And so what kept it from being
11 over?

12 A. Because Neil in trying to settle it gave me
13 some more numbers that when I had another follow-up
14 conversation with Terri she told me that those numbers
15 were not correct either. So now we're in a spot where I
16 don't know where the beginning of truth is on what it is
17 or even -- we are essentially almost back to square one
18 of going "what are we talking about now" because we
19 can't seem to get a handle or at least from my
20 perspective I can't get a handle on what it is that
21 we're even trying to -- to resolve because -- because
22 now we're going, "Well, who has what?" So that sort of,
23 unfortunately, leads us to today.

24 Q. What was the second conversation with Terri
25 Cunningham?

1 A. It may have been on how you spend money on
2 people in movies or television shows or on how they
3 divide those moneys up.

4 Q. No. I mean, I guess you indicated there was
5 a second conversation that really caused the deal to
6 fall apart, correct?

7 A. Uh-huh.

8 Q. You have to use words.

9 A. Oh, yes.

10 Q. Okay. And it arose out of Neil giving you
11 some numbers, correct?

12 A. Right.

13 Q. And what numbers did he give you with regard
14 to what?

15 A. I don't recall the specific numbers. I just
16 felt that whatever it was again was inconsistent with
17 information I was getting.

18 Q. And what did the numbers relate to?

19 A. I think it may have been -- I think it may
20 have been film, Hollywood stuff maybe.

21 Q. Film, Hollywood stuff?

22 A. Uh-huh.

23 Q. You have to use words.

24 A. Yes.

25 Q. With regard to what characters?

1 A. I don't recall specifically.

2 Q. Well, it would have been either Angela,
3 Cogliostro or Medieval Spawn?

4 A. Right. One of those three. Or it might have
5 been actually just a general breakdown of that category.

6 Q. Film, Hollywood stuff?

7 A. Right.

8 Q. And so Neil gave you some numbers in that
9 regard, correct?

10 A. Correct.

11 Q. And was that in terms of royalty percentages?

12 A. Yes. I think most -- most of the numbers
13 that -- that Neil and I passed back and forth to each
14 other were representatives.

15 Q. And again this was after you had this
16 conversation with Terri Cunningham with regard to DC's
17 treatment of derivative works, right?

18 A. Right.

19 Q. And so if Neil provided some numbers relating
20 to Hollywood stuff and you -- and did he tell you that
21 this was his deal with DC?

22 A. Yes. I don't remember the specifics.
23 Alls -- alls I remember was that at the end of the
24 conversation going, "another inconsistency," and I
25 was -- that was my emotional break at that point.

1 Q. And so Neil gave you these numbers and you
2 decided to verify them with Terri Cunningham, correct?

3 A. Right, right.

4 Q. So you called Terri Cunningham?

5 A. Right.

6 Q. Okay. And tell me as best you can that
7 conversation?

8 A. I don't remember the specifics other than
9 I -- I got the same answer which is, "No, it wouldn't
10 work that way, Todd."

11 Q. Okay. What did you tell her?

12 A. Probably asking her generalities of whatever
13 it was was the last numbers that were put in front of
14 me.

15 Q. Okay. And again I'm just surprised because
16 if this is what caused this whole thing to blow up --

17 A. This is the proverbial straw on the camel's
18 back. So this is why that conversation isn't as nearly
19 important as to the ongoing burden leading up to this.
20 So that clarifies it hopefully.

21 Q. Well, it does, but again I'm just puzzled
22 that if this is the straw that broke the camel's back
23 I'm just surprised you can't remember it better.

24 A. Right.

25 Q. Have you told me everything you can recall

1 about this second conversation with Terri Cunningham?

2 A. Right.

3 Q. And when was this kind of in a time sequence
4 in relation to your first conversation with her?

5 Shortly thereafter, months?

6 A. Yes. I don't recall.

7 Q. It could have been the next day; it could
8 have been a year later?

9 A. There's -- there's space in between and I
10 don't know -- I don't know the difference between the
11 two.

12 Q. Okay. So you had this conversation with
13 Terri Cunningham and then what happened next with regard
14 to this dispute?

15 A. From -- from my point of view, then
16 everything up to that point was -- was rescinded and
17 null and void. I just -- I'm -- I'm done. I'm done.
18 I'm done. He's got money. I have been giving him money
19 at this point based on things that may or may not be
20 true. He's been feeding me potentially things that are
21 not completely truthful.

22 I'm heading into my movie just coming out.
23 The TV show's on. I can't enjoy the moment that I
24 should be enjoying at this point. And he potentially
25 has taken as a swap a part of this, Miracleman. And so

1 I get suckered. I got suckered here and I just went,
2 "No, no. It's not going to happen."

3 Q. So did you communicate that to Neil in any
4 way?

5 A. No.

6 Q. Did you tell your people to not make any more
7 payments to Neil?

8 A. Right.

9 Q. Do you recall about when this was?

10 A. It would have been probably in the fourth
11 quarter of '97, late '97, somewhere in there.

12 Q. What happened next?

13 A. You know, I don't think much. I may have
14 gotten on the phone and went, "You know what, grab
15 Miracleman back because he just -- he just took
16 something that wasn't -- that wasn't a fair swap." And
17 after that probably between Neil and I dead silence.

18 Later on I think after he wasn't getting
19 payments he was going, "What's happening? What's
20 happening? Where's my payment?" I think I sent him out
21 a letter sort of stating that there was no deal, so --

22 Q. When was the last time you talked to Neil
23 Gaiman?

24 A. I can't recall.

25 Q. At some point in time you applied for a

1 trademark for Miracleman, right?

2 A. Right.

3 Q. And what was your basis for believing that
4 you were the owner of that trademark at the time of that
5 application?

6 A. From the assets that I acquired at the
7 bankruptcy.

8 Q. And what about those assets caused you to
9 believe that you had rights to the Miracleman trademark?

10 A. I believe there's a document from the court
11 or the trustee or -- that said that it was included as
12 part of that.

13 MR. KAHN: Just so the record's clear, Allen,
14 I think when they first applied, if you're speaking of
15 the 1997 application, it was an intent to use which is a
16 form of a trademark registration application.

17 MR. ARNTSEN: Just -- and I think what I'm
18 just going to do is a little bit of clean up here today
19 and then we'll start tomorrow morning with the documents
20 and we'll move through that.

21 Q. Did you talk to anybody other than your
22 lawyer to get ready for this deposition?

23 A. I don't think so.

24 Q. Okay. Did you look at any documents to
25 prepare for it?

1 A. Outside of with my lawyer you mean?

2 Q. Well, I want to know what documents you
3 looked at.

4 MR. KAHN: Well, I'm trying to avoid --
5 trying to get you an answer without invading
6 work-product privilege.

7 And I'll go this far. I'll say that I gave
8 Todd for him to look through a chronological sampling of
9 communications between him and Neil and the stuff Larry
10 attempted to mediate.

11 BY MR. ARNTSEN:

12 Q. Did you look through anything else other than
13 this chronological sampling that Attorney Kahn just
14 referenced?

15 A. There might have been some accounting
16 spreadsheets.

17 Q. And where did you get those from?

18 MR. KAHN: It would have been from me. That
19 was part of it which was included in the stuff I
20 mentioned earlier.

21 BY MR. ARNTSEN:

22 Q. Okay. Does your wife have some duties with
23 your businesses?

24 A. Yes.

25 Q. What? Over what period of time?

1 A. Off and on starting in 1992.

2 Q. Up through the present?

3 A. Yes.

4 Q. And were there any periods of time that she
5 wasn't involved in your businesses during that time
6 period?

7 A. Yeah.

8 Q. What periods were those?

9 A. Oh, probably in '92 and we had another child
10 in '94, so she probably backed off there. And then
11 again we had another child in '99. So sometimes she
12 was -- sometimes she was 100 percent involved. I mean,
13 it would sort of fluctuate depending upon the need of
14 the family, I guess.

15 Q. And what were your wife's duties and
16 responsibilities?

17 A. They varied on a given task. You know,
18 everything. She's pretty much done a little bit of
19 everything probably along the way, you know, so --

20 Q. For instance, was she involved at all in
21 these communications or payments to Mr. Gaiman?

22 A. I think so. I think she had some
23 involvement.

24 Q. Do you recall what that involvement was?

25 A. Not specifically.

1 Q. And just some sort of background questions on
2 the various corporate entities here.

3 Todd McFarlane Productions, Inc., are you the
4 sole owner?

5 A. Yes.

6 Q. When did you start that company?

7 A. I think in 1992.

8 Q. Are there any other officers of the company?

9 A. Of that company?

10 Q. Yes.

11 A. I don't think so.

12 Q. Okay. And what's the business of Todd
13 McFarlane Productions?

14 A. Doing publishing, licensing, holding the
15 trademarks, doing free-lance art work. I mean, the
16 whole sort of gamut of creating ideas and stuff.

17 Q. TMP International, Inc., are you the sole
18 owner of that?

19 A. Yes.

20 Q. When did you start that?

21 A. Maybe the beginning of '94 maybe.

22 Q. And what's its business?

23 A. Most of it is the manufacturing and selling
24 of action figures.

25 Q. You said "most of it." What's the rest of

1 it?

2 A. I think some -- we do -- I think we have done
3 like the odd vehicle or, you know, a box or something
4 that's a little off center, but, you know, still plastic
5 goods, if you will, plastic toys.

6 Q. McFarlane Worldwide?

7 A. I don't know.

8 Q. Are you the sole owner?

9 A. Yes, probably.

10 Q. What does it do?

11 A. You know what, I don't know. I've got a lot
12 of accountants and a lot of lawyers and a lot of tax
13 reasons for doing stuff.

14 Q. Okay.

15 A. So I don't know what.

16 Q. Todd McFarlane Entertainment, Inc.

17 A. That is a company that takes ideas into
18 Hollywood and sees if anybody will bite on any of those.

19 Q. Has Todd McFarlane Entertainment, Inc. ever
20 involved anything with the Angela, Cogliostro or
21 Medieval Spawn characters?

22 A. No.

23 Q. McFarlane Toys Canada, Inc., what's that?

24 A. That essentially does the same business as
25 McFarlane Toys. It's just that again there are

1 different rules and regulations when you are
2 distributing products up in Canada, so you need another
3 company to sort of abide by certain tax laws and rules.

4 Q. Did that company produce any toys showing the
5 Angela, Cogliostro or Medieval Spawn characters?

6 A. No.

7 Q. McFarlane Toys, Inc., what's that?

8 A. I think that -- I think that's probably the
9 dba or something.

10 Q. Oh, okay.

11 A. It's what we use. It's the name an all the
12 toys, McFarlane Toys, not TMP INTERNATIONAL.

13 Q. So it's the dba with TMP International?

14 A. I believe so.

15 MR. KAHN: It may have once been in the
16 McFarlane Toys, Inc. I don't know.

17 BY MR. ARNTSEN:

18 Q. TMP Asia, Limited?

19 A. That helps us have an office in Hong Kong.
20 It helps us with our international sales to our various
21 distributors internationally outside of North America.

22 Q. With toys or publications?

23 A. With toys.

24 Q. Did it produce anything with Angela,
25 Cogliostro or Medieval Spawn?

1 A. No.

2 Q. McFarlane Europe DB, what's that?

3 A. Another channel of being able to distribute
4 our toys into Europe and so --

5 Q. Does that include any Angela, Cogliostro or
6 Medieval Spawn characters?

7 A. In terms of what?

8 Q. Is McFarlane Europe DB involved in
9 distribution?

10 A. Probably over. If they were -- if the
11 company was alive when those toys were produced, they
12 probably would have had some involvement.

13 Q. And when was that? When were Medieval Spawn
14 toys produced?

15 A. Medieval Spawn was -- you can't lock me to
16 this. It might have been '94 and Angela was '95.

17 Q. And was there ever a Cogliostro toy?

18 A. Yes. But that was -- I believe that was done
19 through our collectors club, so that was -- that was
20 never done as a wide distribution product.

21 Q. Okay. So were any of these companies we've
22 talked about involved in that toy?

23 A. Well, I don't know how collectors club falls
24 under all the umbrellas, but the collectors club sells
25 specialty toys, if you will, or limited runs of toys

1 that we don't sell nationally. So I don't know if
2 that's -- if collectors club I think is actually an
3 official company, you know, so, but --

4 MR. KAHN: But the toys are made by TMP
5 International, right?

6 THE WITNESS: Right, right.

7 MR. KAHN: Just to give Allen that, all roads
8 with toys lead back to TMP International, right?

9 THE WITNESS: Right. TMP International is
10 the toy manufacturer.

11 BY MR. ARNTSEN:

12 Q. All right. TMP International manufactures
13 all of these toys that some of these various
14 corporations may be involved in the distribution of,
15 correct?

16 A. Correct.

17 Q. What's McFarlane Global DB?

18 A. Don't know.

19 Q. Okay. What about TMP Equities, Inc.?

20 A. Don't know.

21 Q. Okay. Quick answer to that.

22 You've testified as to a couple conversations
23 with Terri Cunningham. Is she someone whom you spoke
24 with on a regular basis?

25 A. No.

1 Q. So, I mean, how many phone conversations can
2 you recall that you've had with her? You talked about
3 two, but I mean I'm just trying to get a sense --

4 A. In my life you mean?

5 Q. Yes.

6 A. Well, I don't know. Terri Cunningham was the
7 sort of first person I ever knew at DC comic books
8 because I testified earlier I believe that I had a
9 contract with DC comic books early in my career.

10 All those negotiations, all subsequent
11 conversations, all follow-up always ran through Terri.
12 So my point person at DC comic books on any contractual
13 conversations or even looking for answers all went
14 through Terri.

15 Q. Okay. How about since you started with
16 Image; since 1992 how often have you talked with her?

17 A. Not much. You know, again I run into her the
18 odd time at a convention maybe. Maybe the odd time I've
19 been in New York swung by the office and said, "Hi,"
20 but --

21 Q. Have you called her on any occasions other
22 than the two you've testified to?

23 A. Since then you mean?

24 Q. Yes.

25 A. I don't think so.

1 Q. Okay. And just if I understand correctly
2 from your testimony, with regard to Neil's DC contract
3 issues, you first had a phone call with her in which you
4 talked about derivative characters, correct?

5 A. Right.

6 Q. And then you've testified to that.

7 And I believe it was your testimony that even
8 following that conversation you were still willing to go
9 forward with your deal with Neil, correct?

10 A. We were still -- I was still willing to try
11 and find a resolution.

12 Q. Then the second conversation that you
13 testified to was what made you stop trying, is that
14 correct?

15 A. Yes, yes. Unfortunately, yes.

16 MR. ARNTSEN: Okay. Why don't we take a
17 break for the evening.

18 MR. KAHN: Okay.

19 (Whereupon, the deposition was then
20 concluded at 5:10 p.m.)

21

22

23

TODD D.M. McFARLANE

24 3442-G

25

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4

5 BE IT KNOWN that the foregoing deposition was
6 taken before me, PAUL GROSSMAN, a Notary Public and
7 Certified Court Reporter #50028 in and for the County of
8 Maricopa, State of Arizona; that the witness before
9 testifying was duly sworn by me to testify to the whole
10 truth; that the witness will read and sign the
11 deposition; that the questions propounded to the witness
12 and the answers of the witness thereto were taken down
13 by me in shorthand and thereafter reduced to print by
14 computer-aided transcription under my direction; that
15 the foregoing 131 pages are a true and correct
16 transcript of all proceedings had upon the taking of
17 said deposition, all done to the best of my skill and
18 ability.

19 I FURTHER CERTIFY that I am in no way related
20 to any of the parties hereto, nor am I in any way
21 interested in the outcome hereof.

22 DATED at Phoenix, Arizona, this 22nd day of
23 June, 2002.



Paul Grossman
Paul Grossman, Notary Public
AZ CCR #50028